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California. Laws, statutes, etc.

CALIFORNIA LAWS

OF INTEREST TO

WOMEN AND CHILDREN

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PREFACE.

This compilation is designed to present, in most compact form, the more important laws of California of special interest to women and children. It is now reasonable to suppose that the women of this state will take a greater interest in all the laws on the statute books, since henceforth they will share with the men the responsibility of lawmaking. It is true, however, that there is a comparatively small body of the law which concerns them especially: this will be found in the following pages.

The constitution which all voters, male and female, ought to read carefully, might well have been printed herein entire. But as a state edition in pamphlet form has recently been issued by the Secretary of State, from whom a copy may be obtained, reprinting here has not been considered necessary. Of the large number of educational enactments only the fundamental "Act to enforce the educational rights of children" has been given; a compilation of the "School law of California" may be had from the Superintendent of Public Instruction.

The extracts in this book are arranged numerically under the codes. The Civil Code contains the law covering the rights and duties of the individual; and the Code of Civil Procedure, the law which shows how those rights may be enforced. The nature of the Penal Code is sufficiently indicated from its title. The Political Code contains that body of the law which defines the rights, powers and duties of the state, its subdivisions, and its officers.

No comments, notes or citations to cases have been given; as all these things may be found in the complete codes of California, copies of which are or ought to be accessible in every public library of any size. The State Library, which contains a very fine law collection, is ready at all times to assist the citizens of the state in their enquiries.

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FROM THE

CONSTITUTION.

ARTICLE II.

SECTION 1. Every native citizen of the United States, every person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been resident of the state one year next preceding the election, and of the county in which he or she claims his or her vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided,* no native of China, no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of the embezzlement or misappropriation of public money, and no person who shall not be able to read the constitution in the English language and write his or her name, shall ever exercise the privileges of an elector in this state; *provided,* that the provisions of this amendment relative to an educational qualification shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age and upwards at the time this amendment shall take effect. [*Amendment adopted October 10, 1911.*]

ARTICLE IV.

SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the controller; and no money shall ever be appropriated or drawn from the state treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the state as a state institution, nor shall any grant or donation of property ever be made thereto by the state; *provided,* that notwithstanding anything contained in this or any other section of this constitution, the legislature shall have the power to grant aid to the institutions conducted for the support and maintenance of minor orphans, or half-orphans, or abandoned children, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided, further,* that the state shall have at any time the right to inquire into the management of such institution; *provided, further,* that whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half-orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town shall be

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entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control.

SEC. 25. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of justices of the peace, police judges, and of constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of courts of justice.

Fourth—Providing for changing the venue in civil or criminal actions.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining or vacating roads, highways, streets, alleys, town plots, parks, cemeteries, graveyards, or public grounds not owned by the state.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the state treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this state, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or incumber his or her property.

Eighteenth—Legalizing, except as against the state, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

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Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, township, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.

ARTICLE XX.

SEC. 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 8. All property, real and personal, owned by either husband or wife, before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

SEC. 18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

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CIVIL CODE.

PERSONS.

Minors, who are.

§ 25. Minors are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

Periods of minority, how calculated.

§ 26. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

Adults, who are.

§ 27. All other persons are adults.

Unborn child.

§ 29. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

Custody of minors.

§ 32. The custody of minors and persons of unsound mind is regulated by Part III of this division (*i. e.* § 55–276).

Minors can not give a delegation of power.

§ 33. A minor can not [1] give a delegation of power, nor under the age of eighteen, [2] make a contract relating to [*a*] real property, or [*b*] any interest therein, or [*c*] relating to any personal property not in his immediate possession or control. [*Amended March 30, 1874.*]

Contracts by minors made; disaffirmance.

§ 34. A minor may make any other contract than as above specified, in the same manner as an adult, subject only [1] to his power of disaffirmance under the provisions of this title, and subject [2] to the provisions of the titles on [*a*] marriage, and on [*b*] master and servant. [*Amended March 30, 1874.*]

When minors may disaffirm.

§ 35. In all cases other than those specified in sections thirty-six and thirty-seven, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed [1] by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, [2] by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen,

NOTE.—The Civil Code was enacted as a whole March 21, 1872. Sections which have been enacted or amended since that time are followed by date of enactment or amendment.

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it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent. [*Amended March 30, 1874.*]

Can not disaffirm contract for necessaries.

§ 36. A minor can not disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them. [*Amended March 30, 1874.*]

Nor certain obligations.

§ 37. A minor can not disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

Minors liable for wrongs.

§ 41. A minor, or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

Minors may enforce their rights.

§ 42. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

PERSONAL RIGHTS.

General personal rights.

§ 43. Besides the personal rights mentioned or recognized in the Political Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection [1] from bodily restraint or harm, [2] from personal insult, [3] from defamation, and [4] from injury to his personal relations.

Defamation.

§ 44. Defamation is effected by:

1. Libel;
2. Slander.

Libel.

§ 45. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

Slander.

§ 46. Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;

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2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;

3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;

4. Imputes to him impotence or a want of chastity; or,

5. Which, by natural consequence, causes actual damage.

Privileged publication, is what.

§ 47. A privileged publication is one made—

1. In the proper discharge of an official duty.

2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law.

3. In a communication, without malice, to a person interested therein, [1] by one who is also interested, or [2] by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or [3] who is requested by the person interested to give the information.

4. By a fair and true report, without malice, in a public journal, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof, or of a verified charge or complaint made by any person to a public official, upon which complaint a warrant shall have been issued.

5. By a fair and true report, without malice, of the proceedings of a public meeting, if such meeting was lawfully convened for a lawful purpose and open to the public, or the publication of the matter complained of was for the public benefit. [*Amended March 26, 1895.*]

Malice not inferred.

§ 48. In the cases provided for in subdivisions three, four, and five, of the preceding section, malice is not inferred from the communication or publication. [*Amended March 26, 1895.*]

Protection of personal relations.

§ 49. The rights of personal relations forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, or a child from a parent, or from a guardian entitled to its custody.

3. The seduction of a wife, daughter, orphan sister, or servant.

4. Any injury to a servant which affects his ability to serve his master. [*Amended March 7, 1905.*]

Right to use force.

§ 50. Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master or guest. [*Amended March 30, 1874.*]

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In places of public accommodation or amusement.

§ 51. All citizens within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, hotels, eating-houses, barber-shops, bath-houses, theaters, skating-rinks, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens. [*Enacted March 21, 1905.*]

Damages recoverable.

§ 52. Whoever violates any of the provisions of the last preceding section [1] by denying to any citizen, except for reasons applicable alike to every race or color, the full accommodations, advantages, facilities, and privileges in said section enumerated, or [2] by aiding or inciting such denial, or whoever [3] makes any discrimination, distinction, or restriction on account of color or race, or except for good cause, applicable alike to all citizens of every color or race whatever, in respect to the admission of any citizen to, or his treatment in, any inn, hotel, restaurant, eating-house, barber-shop, bath-house, theater, skating rink, or other public place of amusement or accommodation, whether such place is licensed or not, or whoever aids or incites such discrimination, distinction, or restriction, for each and every such offense is liable in damages in an amount not less than fifty dollars, which may be recovered in an action at law brought for that purpose. [*Enacted March 21, 1905.*]

Wrongful refusal to admit person to places of public amusement.

§ 53. It is unlawful for any corporation, person, or association, or the proprietor, lessee, or the agents of either, of any opera house, theater, melodeon, museum, circus, caravan, race course, fair, or other place of public amusement or entertainment, to refuse admittance to any person over the age of twenty-one years, who presents a ticket for admission acquired by purchase, or who tenders the price thereof for such ticket, and who demands admission to such place.

Any person under the influence of liquor, or who is guilty of boisterous conduct, or any person of lewd or immoral character, may be excluded from any such place of amusement. [*Enacted March 21, 1905.*]

Violation of preceding provisions.

§ 54. Any person who is refused admission to any place of amusement contrary to the provisions of the last preceding section, is entitled to recover from the proprietor, lessee, or their agents, or from any such person, corporation, or association, or the directors thereof, his actual damages, and one hundred dollars in addition thereto. [*Enacted March 21, 1905.*]

MARRIAGE.

What constitutes marriage.

§ 55. Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making the contract is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization authorized by this code. [*Amended March 26, 1895.*]

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Minors capable of contracting marriage.

§ 56. An unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

Marriage, how manifested and proved.

§ 57. Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases. [*Amended March 26, 1895.*]

§ 58. Repealed.

Incompetency of parties to.

§ 59. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

Marriages illegal.

§ 60. All marriages of white persons with negroes, Mongolians, or mulattoes are illegal and void. [*Enacted March 21, 1905.*]

Subsequent marriage.

§ 61. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless :

1. The former marriage has been annulled or dissolved. In no case can a marriage of either of the parties during the life of the other, be valid in this state, if contracted within one year after the entry of an interlocutory decree in a proceeding for divorce.

2. Unless such former husband or wife is [1] absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or [2] is generally reputed or believed by such person to be dead at the time such subsequent marriage was contracted. In either of which cases the subsequent marriage is valid until its nullity is adjudgd by a competent tribunal. [*Amended March 16, 1903.*]

Release from marriage contract.

§ 62. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein. [*Amended March 30, 1874.*]

Marriages contracted without the state.

§ 63. All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, are valid in this state.

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AUTHENTICATION OF MARRIAGE.

Procedure required.

§ 68. Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but non-compliance with its provisions by others than a party to a marriage does not invalidate it. [*Amended March 21, 1905.*]

Marriage licenses..

§ 69. All persons about to be joined in marriage must first obtain a license therefor, from the county clerk of the county in which the marriage is to be celebrated, which license must show:

1. The identity of the parties.
2. Their real and full names, and places of residence.
3. Their ages; and
4. Whether white, Mongolian, negro or mulatto.

No license must be granted when either of the parties, applicants therefor, is an imbecile, or insane, or who at the time of making the application, or proofs herein required, for said license, is under the influence of any intoxicating liquor or narcotic drug; no license must be issued authorizing the marriage of a white person with a negro, mulatto, or Mongolian: If the male is under the age of twenty-one years, or the female is under the age of eighteen years, and such person has not been previously married, no license must be issued by the county clerk unless the consent in writing of the parents of the person under age, or one of such parents, or of his or her guardian, is presented to him, duly verified by such parents, or parent, or guardian; and such consent must be filed by the clerk, and he must state such facts in the license. For the purpose of ascertaining all the facts mentioned or required in this section, the clerk, at the time the license is applied for, may, if he deems it necessary in order to satisfy himself as to matters in this section enumerated, examine the male applicant for a license on oath, which examination shall be reduced to writing by the clerk, and subscribed by him. [*Amended March 15, 1907.*]

Certificate of registry of marriage.

§ 69*a*. All persons about to be joined in marriage must obtain from the county clerk of the county in which the marriage is to be celebrated, in addition to the license therefor provided for in section sixty-nine of the Civil Code, a certificate of registry as provided in section three thousand and seventy-six of the Political Code which shall contain among other matters as near as can be ascertained, the race, color, age, name and surname, birthplace, residence of the parties to be married, number of marriage and condition of each, whether single, widowed, or divorced, the occupation of the parties, maiden name of the female, if previously married, the names and birthplaces of the parents of each, and the maiden name of the mother of each, which said certificate of registry shall be filled out as herein provided in the presence of the county clerk issuing the marriage license and shall then be presented to the person performing the ceremony and shall be filed by him with the county recorder within three days after the ceremony. [*Enacted April 26, 1909.*]

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By whom may be solemnized.

§ 70. Marriage may be solemnized by either a justice of the supreme court, justice of the district courts of appeal, judge of the superior court, justice of the peace, judge of any police court, city recorder, priest or minister of the gospel of any denomination. [*Amended March 1, 1907.*]

No particular form of solemnization.

§ 71. No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

Requirements by persons solemnizing marriage.

§ 72. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license. [*Amended March 30, 1874.*]

Certificate of marriage.

§ 73. The person solemnizing a marriage must make, sign and indorse upon, or attach to, the license, a certificate showing:

1. The fact, time and place of solemnization; and
2. The names and places of residence of one or more witnesses to the ceremony. [*Amended March 30, 1874.*]

Certificate to parties and recorder.

§ 74. He must, at the request of, and for either party, make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after the marriage.

§ 75. Repealed.

Declaration where there is no record.

§ 76. If no record of the solemnization of a marriage heretofore contracted, be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages, and residences of the parties.
2. The fact of marriage.
3. That no record of such marriage is known to exist. Such declaration must be subscribed by the parties and attested by at least three witnesses. [*Amended March 30, 1874.*]

To be acknowledged and recorded.

§ 77. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property.

Testing validity of marriage.

§ 78. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the superior court, to have the validity of the marriage determined and declared. [*Amended February 15, 1883.*]

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Marriage without license.

§ 79. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made. [*Enacted February 3, 1878.*]

Recording declaration of marriage.

§ 79*a*. The provisions of this chapter, so far as they relate to the solemnizing of marriages, are not applicable to members of any particular religious denomination having, as such, any peculiar mode of entering the marriage relation; but such marriages must be declared, as provided in section seventy-six, and be acknowledged and recorded, as provided in section seventy-seven. When a marriage is declared as provided in said section seventy-six, the husband must file said declaration with the county recorder within thirty days after such marriage, and upon receiving the same the county recorder must record the same; and if the husband fails to make such declaration and file the same for record, as herein provided, he is liable to the same penalties as any person authorized to solemnize marriages, who fails to make the return of such solemnization as provided by law. [*Amended March 21, 1905.*]

Action to have marriage declared void.

§ 80. Either party to an incestuous or void marriage may proceed by action in the superior court, to have the same so declared. [*Amended April 6, 1880.*]

DIVORCE.

Causes for annulling marriages.

§ 82. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.
2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.
3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife.
4. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.
5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.
6. That either party was, at the time of marriage, physically incapable of entering into the marriage state, and such incapacity continues, and appears to be incurable. [*Amended March 30, 1874.*]

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Actions therefor, when commenced.

§ 83. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent.

2. For causes mentioned in subdivision two: by either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in subdivision four: by the party injured, within four years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivision five: by the injured party, within four years after the marriage.

6. For causes mentioned in subdivision six: by the injured party, within four years after the marriage. [*Amended March 30, 1874.*]

Children of annulled marriage.

§ 84. A judgment of nullity of marriage does not affect the legitimacy of children begotten before the judgment. [*Amended March 21, 1905.*]

Custody of children.

§ 85. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Effect of judgment of nullity.

§ 86. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

Marriage, how dissolved.

§ 90. Marriage is dissolved only:

1. By death of one of the parties; or,

2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties. [*Amended March 30, 1874.*]

Effect of divorce.

§ 91. The effect of a judgment decreeing a divorce, is to restore the parties to the state of unmarried persons. [*Amended March 30, 1874.*]

Causes for divorce.

§ 92. Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.

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4. Wilful neglect.
5. Habitual intemperance.
6. Conviction of felony. [*Amended March 30, 1874.*]

Adultery defined.

§ 93. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

Extreme cruelty.

§ 94. Extreme cruelty is the wrongful infliction of grievous [1] bodily injury, or grievous [2] mental suffering, upon the other by one party to the marriage. [*Amended March 7, 1905.*]

Desertion.

§ 95. Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Desertion, how manifested.

§ 96. Persistent refusal [1] to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or [2] the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

In case of stratagem or fraud.

§ 97. When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

In case of cruelty.

§ 98. Departure or absence of one party from the family dwelling-place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

Separation by consent not desertion.

§ 99. Separation by consent, with or without the understanding that one of the parties will apply for divorce, is not desertion.

Absence becomes desertion, when.

§ 100. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation. [*Amended March 30, 1874.*]

Consent to separate revocable.

§ 101. Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

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Desertion, how cured.

§ 102. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal. [*Amended March 30, 1874.*]

Wife must abide by husband's selection of home.

§ 103. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

If the place is unfit.

§ 104. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

Wilful neglect.

§ 105. Wilful neglect is [1] the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is [2] the failure to do so by reason of idleness, profligacy, or dissipation.

Habitual intemperance.

§ 106. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which [1] disqualifies the person a great portion of the time from properly attending to business, or [2] which would reasonably inflict a course of great mental anguish upon the innocent party.

Habitual intemperance for one year.

§ 107. [1] Wilful desertion, [2] wilful neglect, or [3] habitual intemperance must continue one year before either is a ground for divorce.

Divorces denied, on showing what.

§ 111. Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

Connivance.

§ 112. Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

Corrupt consent.

§ 113. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

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Collusion.

§ 114. Collusion is [1] an agreement between husband and wife that one of them shall commit, or [2] appear to have committed, or to [3] be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

Condonation.

§ 115. Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

Requisites to condonation.

§ 116. The following requirements are necessary to condonation.

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party;
3. Restoration of the offending party to all marital rights.

Condonation implies what.

§ 117. Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness.

Evidence of condonation.

§ 118. Where the cause of divorce consists [1] of a course of offensive conduct, or [2] arises, in cases of cruelty, from excessive acts of ill-treatment which may, aggregately, constitute the offense, [*a*] cohabitation, or [*b*] passive endurance, or [*c*] conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. [*Amended March 30, 1874.*]

Condonation can only be made when.

§ 119. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. [*Amended March 30, 1874.*]

Concealment of facts in certain cases.

§ 120. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

Condonation, how revoked.

§ 121. Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

Recrimination.

§ 122. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

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Condonation, when to bar defense.

§ 123. Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as provided in section one hundred and twenty-one, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown. [*Amended March 30, 1874.*]

Divorce, when denied.

§ 124. A divorce must be denied:

1. When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,

2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence.

3. In all other cases when there is an unreasonable lapse of time before the commencement of the action. [*Amended March 30, 1874.*]

Lapse of time establishes certain presumptions.

§ 125. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relations, notwithstanding the commission of such offense.

Presumptions may be rebutted.

§ 126. Presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

Limitation of time.

§ 127. There are no limitations of time for commencing actions for divorce, except such as are contained in section one hundred and twenty-four.

Residence of plaintiff.

§ 128. A divorce must not be granted unless the plaintiff has been a resident of the state one year, and of the county in which the action is brought three months, next preceding the commencement of the action; *provided,* that a cross-complainant in an action for divorce need not be or have been a resident of the state or of the county in which the action is brought or pending in order to entitle such cross-complainant to a divorce in said action; *and provided, further,* that in an action for divorce a cross-complainant must personally verify the cross-complaint. [*Amended April 6, 1911.*]

Proof of actual residence required.

§ 129. In actions for divorce the presumption of law, that the domicile of the husband is the domicile of the wife, does not apply. After separation, each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

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Divorce not to be granted by default, etc.

§ 130. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers. [*Amended March 30, 1874.*]

Interlocutory judgment.

§ 131. In actions for divorce, the court must file its decisions and conclusions of law as in other cases, and if it determines that no divorce shall be granted, final judgment must thereupon be entered accordingly. If it determines that the divorce ought to be granted, an interlocutory judgment must be entered, declaring that the party in whose favor the court decides is entitled to a divorce, and from such interlocutory judgment an appeal may be taken within six months after its entry, in the same manner and with like effect as if the judgment were final. After the entry of the interlocutory judgment, neither party shall have the right to dismiss the action without the consent of the other. [*Amended April 16, 1909.*]

Final judgment, after one year.

§ 132. When one year has expired after the entry of such interlocutory judgment, the court on motion of either party, or upon its own motion, may enter the final judgment granting [1] the divorce, and such final judgment shall [2] restore them to the status of single persons, and [3] permit either to marry after the entry thereof; and [4] such other and further relief as may be necessary to complete disposition of the action, but if any appeal is taken from the interlocutory judgment or motion for a new trial made, final judgment shall not be entered until such motion or appeal has been finally disposed of, nor then, if the motion has been granted or judgment reversed. The death of either party after the entry of the interlocutory judgment does not impair the power of the court to enter final judgment as hereinbefore provided; but such entry shall not validate any marriage contracted by either party before the entry of such final judgment, nor constitute any defense of any criminal prosecution made against either. [*Enacted March 2, 1903.*]

Relief may be adjudged in some cases.

§ 136. Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance by the husband, of the wife and children of the marriage, or any of them. [*Amended March 21, 1905.*]

Alimony.

§ 137. When an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself and her children, or to prosecute or defend the action. When the husband wilfully deserts the wife or when the husband wilfully fails to provide for the wife or when the wife

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has any cause of action for divorce as provided in section ninety-two of this code, she may, without applying for a divorce, maintain in the superior court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court. [*Amended March 1, 1907.*]

Orders respecting custody of children.

§ 138. In actions for divorce the court may, [1] during the pendency of the action, or [2] at the final hearing or [3] at any time thereafter during the minority of any of the children of the marriage, make such order for the custody, care, education, maintenance and support of such minor children as may seem necessary or proper, and may at any time modify or vacate the same. [*Amended March 3, 1905.*]

Support of wife and children on divorce or separation granted to wife.

§ 139. Where a divorce is granted for an offense of the husband, the court may compel him [1] to provide for the maintenance of the children of the marriage, and [2] to make such suitable allowance to the wife for her support, [*a*] during her life, or [*b*] for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

Security for maintenance and alimony.

§ 140. The court may require the husband to give reasonable security for providing [1] maintenance or [2] making any payments required under the provisions of this chapter, and may enforce the same [*a*] by the appointment of a receiver, or [*b*] by any other remedy applicable to the case.

Court shall resort to what.

§ 141. In executing the five preceding sections the court must resort:

1. To the community property; then,
2. To the separate property of the husband.

If wife has sufficient for her support.

§ 142. When the wife has either a separate estate, or there is community property sufficient to give her alimony or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband.

Community and separate property.

§ 143. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

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Legitimacy of issue.

§ 144. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

§ 145. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case.

Disposition of community property.

§ 146. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property, and the homestead, shall be assigned as follows:

1. If the decree be rendered on the ground of adultery, or extreme cruelty, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just.

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

4. If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party. [*Amended March 30, 1874.*]

§ 147. The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this chapter provided, and whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds. [*Amended March 30, 1874.*]

§ 148. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court. [*Amended March 30, 1874.*]

HUSBAND AND WIFE.

Mutual obligations.

§ 155. Husband and wife contract towards each other obligations of mutual respect, fidelity, and support.

Rights of husband.

§ 156. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

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In other respects their interests separate.

§ 157. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

Husband and wife may make contracts.

§ 158. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.

How far may alter their legal relations.

§ 159. A husband and wife can not, by any contract with each other, alter their legal relations, except [1] as to property, and except that [2] they may agree, in writing, to an immediate separation, and may [3] make provision for the support of [*a*] either of them and of [*b*] their children during such separation. [*Amended March 30, 1874.*]

Consideration for agreement of separation.

§ 160. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

May be joint tenants.

§ 161. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

Separate property of the wife.

§ 162. All property of the wife, [1] owned by her before marriage, and that [2] acquired afterwards by gift, bequest, devise, or descent, with [3] the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

Separate property of the husband.

§ 163. All property [1] owned by the husband before marriage, and that [2] acquired afterwards by gift, bequest, devise, or descent, with [3] the rents, issues, and profits thereof, is his separate property.

Community property.

§ 164. All other property acquired after marriage by either husband or wife, or both, is community property; but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property. And in case the conveyance be to such married woman and to her husband, or to her and any other person, the presumption is that the married woman takes the part conveyed to her, as tenant in common, unless a different intention is expressed in the instrument, and the presumption in this section mentioned is conclusive in favor of a purchaser or encumbrancer in good faith and for a valuable consideration. And in cases where married women have conveyed, or shall hereafter convey, real property which they acquired

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prior to May nineteenth, eighteen hundred and eighty-nine, the husbands, or their heirs or assigns, of such married women, shall be barred from commencing or maintaining any action to show that said real property was community property, or to recover said real property, as follows: [1] As to conveyances heretofore made, from and after one year from the date of the taking effect of this act; and [2] as to conveyances hereafter made, from and after one year from the filing for record in the recorder's office of such conveyances, respectively. [*Amended March 4, 1897.*]

Inventory of separate property of wife.

§ 165. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside.

Filing inventory notice of wife's title.

§ 166. The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the wife. [*Amended March 30, 1874.*]

Community property, contracts by wife.

§ 167. The property of the community is not liable for the contracts of of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband. [*Amended March 30, 1874.*]

Earnings of wife not liable for debts of husband.

§ 168. The earnings of the wife are not liable for the debts of the husband.

Earnings of wife, when living separate.

§ 169. The [1] earnings and accumulations of the wife and [2] of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

Liability for debts of wife contracted before marriage.

§ 170. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

Wife's property not liable for husband's debts.

§ 171. The separate property of the wife is liable for her own debts contracted before or after her marriage, but is not liable for her husband's debts; *provided,* that such property is liable for the payment of debts contracted by the husband or wife for the necessaries of life furnished to them or either of them while they are living together; *provided,* that the provisions of this act shall not apply to the separate property of the wife held by her at the time of her marriage or acquired by her by devise or succession after marriage. [*Amended March 18, 1905.*]

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Management, etc., of community property.

§ 172. The husband has the management and control of the community property, with the like absolute power of disposition, other than testamentary, as he has of his separate estate; *provided, however,* that he can not make a gift of such community property, or convey the same without a valuable consideration, unless the wife, in writing, consent thereto; *and provided, also,* that no sale, conveyance or encumbrance of the furniture, furnishings and fittings of the home, or of the clothing and wearing apparel of the wife or minor children, which is community property shall be made without the written consent of the wife. [*Amended March 31, 1891.*]

Courtesy and dower not allowed.

§ 173. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

Support of wife.

§ 174. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband. [*Amended March 30, 1874.*]

Same—When separate from husband.

§ 175. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement. [*Amended March 30, 1874.*]

Wife to support husband, when.

§ 176. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable, from infirmity, to support himself. [*Amended March 30 1874.*]

Rights of husband and wife.

§ 177. The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

Marriage settlement contracts.

§ 178. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

To be acknowledged and recorded.

§ 179. When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

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Effect of recording.

§ 180. The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

Minors may make marriage settlements.

§ 181. A minor capable of contracting marriage may make a valid marriage settlement.

PARENT AND CHILD.

Legitimacy of children born in wedlock.

§ 193. All children born in wedlock are presumed to be legitimate.

Children after dissolution of marriage.

§ 194. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. [*Amended March 30, 1874.*]

Who may dispute the legitimacy.

§ 195. The presumption of legitimacy can be disputed only by the [1] husband or [2] wife, or the [3] descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

Obligation of parents.

§ 196. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

Custody of legitimate child.

§ 197. The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings; but he can not transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father [1] be dead, or [2] be unable, or [3] refuse to take the custody, or [4] has abandoned his family, the mother is entitled thereto. [*Amended March 30, 1874.*]

Husband and wife living separate.

§ 198. The husband and father, as such, has no right superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart form each other.

When husband or wife may bring action for the exclusive control of children.

§ 199. Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, [1] during the pendency of such action, or [2] at the final hearing thereof, or [3] afterwards, make such order or decree in re-

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gard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may [4] at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

Custody of an illegitimate child.

§ 200. The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings.

Allowance to parent.

§ 201. The proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Parent can not control child's property.

§ 202. The parent, as such, has no control over the property of the child.

Remedy for parental abuse.

§ 203. The abuse of parental authority is the subject of judicial cognizance in a civil action brought [1] by the child, or [2] by its relative within the third degree, or [3] by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

When parental authority ceases.

§ 204. The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;
2. Upon the marriage of the child; or,
3. Upon its attaining majority.

Remedy when a parent dies without providing for the support of his child.

§ 205. If a parent chargeable with the support of a child dies, [1] leaving it chargeable to the county, and [2] leaving an estate sufficient for its support, the supervisors of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

Reciprocal duties of parents and children.

§ 206. It is the duty of the [1] father, the [2] mother, and the [3] children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

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When a parent is liable for necessaries.

§ 207. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

When a parent is not liable for support.

§ 208. A parent is not bound to compensate [1] the other parent, or [2] a relative, for the voluntary support of his child, without an agreement for compensation, nor [3] to compensate a stranger for the support of a child who has abandoned the parent without just cause.

Support of wife's children by a former marriage.

§ 209. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services.

Compensation and support of adult child.

§ 210. Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

Parent may relinquish services and custody of child.

§ 211. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

Wages of minors.

§ 212. The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages. [*Amended March 30, 1874.*]

Right of parent to determine residence of child.

§ 213. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

Wife may obtain custody of minor children.

§ 214. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section two hundred and forty-six.

When child becomes legitimate.

§ 215. A child born before wedlock becomes legitimate by the subsequent marriage of its parents. [*Enacted March 30, 1874.*]

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ADOPTION.

Child may be adopted.

§ 221. Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter.

Who may adopt.

§ 222. The person adopting the child must be at least ten years older than the person adopted. [*Amended March 30, 1874.*]

Consent to adoption by wife.

§ 223. A married man, not lawfully separated from his wife, can not adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband, without his consent; *provided,* the husband or wife, not consenting, is capable of giving such consent. [*Amended March 30, 1874.*]

Consent necessary. Orphans and abandoned children.

§ 224. A legitimate child can not be adopted without the consent of its parents, if living; nor an illegitimate child without the consent of its mother, if living; except, that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or cruelty, and for either cause divorced, or adjudged to be habitually intemperate in the use of intoxicants, or who has been judicially deprived of the custody of the child on account of cruelty or neglect. Neither is consent of any parent necessary in case of any abandoned child. Any child deserted by its parents without provision for their identification, or relinquished by its parent or parents for the purpose of adoption expressed in writing signed and acknowledged by such parent or parents before an officer authorized to take acknowledgments, shall from the date of such act of desertion or of such relinquishment be deemed to be an abandoned child within the meaning of this section. Any child left in the care and custody of another by its parent or parents without any provision for its support, for the period of one year, may after such notice to the parent or parents residing within the state and to such other relatives of said child residing within the county as the court shall require, be determined by order of the juvenile court of the county in which said child was so left to be an abandoned child within the terms of this section. Any abandoned child within the meaning of this section or any child whose parent or parents have been judicially deprived of its custody on account of cruelty or neglect, maintained by or in the custody of any orphan asylum within this state, any charitable organization or society receiving state aid or receiving commitments from the juvenile court, may be adopted with the consent of the managers of such orphan asylum, charitable organization or society. Any orphan child for whose support no provision has been made by any person for a period of one year, but who has been maintained during said year by or in the custody of any orphan asylum within this state, any charitable organization or society receiving state aid or receiving commitments from the juvenile

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court, may be adopted with the consent of the managers of such orphan asylum, charitable organization or society. [*Amended March 12, 1911.*]

Consent of child.

§ 225. The consent of a child, if over the age of twelve years, is necessary to its adoption.

Proceedings on adoption.

§ 226. Any person desiring to adopt a child may, for that purpose, petition the superior court of the county in which the petitioner resides. The [1] person adopting a child, and [2] the child adopted, and [3] the other persons, if within or residents of said county, whose consent is necessary, must appear before the court, and [4] the necessary consent must thereupon be signed and [5] an agreement executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of said county, then [6] their written consent, duly proved or acknowledged, according to sections eleven hundred and eighty-two and eleven hundred and eighty-three [7] must be filed in said superior court at the time of the application for adoption. [*Amended March 16, 1907.*]

Judge's order in adoption proceedings.

§ 227. The court must [1] examine all persons appearing before it pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, it must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting. The petition, agreement, consent, and order must be filed and registered in the office of the county clerk in the same manner as papers in other special proceedings. [*Amended March 21, 1905.*]

Effect of adoption.

§ 228. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation. [*Amended March 30, 1874.*]

Effect on former relations of child.

§ 229. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it.

Adoption of illegitimate child.

§ 230. The father of an illegitimate child, by [1] publicly acknowledging it as his own, [2] receiving it as such, [3] with the consent of his wife, if he is married, [4] into his family, and [5] otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

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GUARDIAN AND WARD.

Guardian.

§ 236. A guardian is a person appointed to take care of the person or property of another.

Ward.

§ 237. The person over whom or over whose property a guardian is appointed, is called his ward.

Kinds of guardians.

§ 238. Guardians are either:
1. General; or,
2. Special.

General guardian, what.

§ 239. A general guardian is a guardian of the person or of all the property of the ward within this state, or of both.

Special guardian, what.

§ 240. Every other is a special guardian.

Guardian appointment by will, etc.

§ 241. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:
1. If the child be legitimate, by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent.
2. If the child be illegitimate, by the mother. [*Amended March 30, 1874.*]

§ 242. Repealed.
§ 243. Repealed.
§ 244. Repealed.
§ 245. Repealed.

Rules for awarding the custody of minors.

§ 246. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:
1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;
2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor and business, then to the father;
3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:
(1) To a parent;

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(2) To one who was indicated by the wishes of a deceased parent;
(3) To one who already stands in the position of a trustees of a fund to be applied to the child's support;
(4) To a relative.

4. Any parent who [1] knowingly or wilfully abandons, or [2] having the ability so to do, [3] fails to maintain his minor child under the age of fourteen years, forfeits the guardianship of such child; and any parent or guardian who [1] knowingly permits his child or ward to remain for the space of one year in any orphan asylum of this state, wherein such child is supported by charity, and who, [2] during such period, fails to give notice in writing to the managers or officers of such asylum that he is such parent or guardian, abandons and forever forfeits all right to the guardianship, care, custody, and control of such child. The officers and managers of any orphan asylum having any such abandoned child in its care have the preferred right to the guardianship of such child. [*Amended March 30, 1874.*]

§ 247. Repealed.
§ 248. Repealed.
§ 249. Repealed.

Relation confidential.

§ 250. The relation of guardian and ward is confidential, and is subject to the provisions of the title on Trust.

Guardian under direction of court.

§ 251. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Death of a joint guardian.

§ 252. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

Removal of guardian.

§ 253. A guardian may be removed by the superior court for any of the following causes:

1. For abuse of his trust;
2. For continued failure to perform its [his] duties;
3. For incapacity to perform its [his] duties;
4. For gross immorality;
5. For having an interest adverse to the faithful performance of his duties;
6. For removal from the state;
7. In the case of a guardian of the property, for insolvency; or,
8. When it is no longer proper that the ward should be under guardianship. [*Amended April 6, 1880.*]

Guardian appointed by parent, how superseded.

§ 254. The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided by section 253;
2. By the solemnized marriage of the ward; or,
3. By the ward's attaining majority.

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Suspension of power of guardian.

§ 255. The power of a guardian appointed by a court is suspended only:
1. By order of the court; or,
2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,
3. The guardianship over the person of the ward, by the marriage of the ward. [*Amended March 30, 1874.*]

Release by ward.

§ 256. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

Guardian's discharge.

§ 257. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

§ 258. Repealed.

MASTER AND APPRENTICE.

Minors may be bound as apprentices.

§ 264. Every minor of the age of fourteen years or upwards may be bound by indenture as an apprentice to any mechanical trade or art or the occupation of farming to the age of eighteen, if a female, or to the age of twenty-one years, if a male. [*Amended March 21, 1905.*]

Persons who may bind minor.

§ 265. A minor, with his consent, may be bound by [1] his father, or, in case of his [*a*] death or [*b*] incompetency, or where he has [*c*] wilfully abandoned his family for one year without making suitable provision for their support, or [*d*] is habitually intemperate in the use of intoxicants, or [*e*] is a vagrant, then by [2] his mother or [3] legal guardian. An [4] executor who, by the will of the father, is directed to bring up a child to a trade or calling, has power to bind by indenture in like manner as the father might have done, if living. If a child is illegitimate, the mother alone has power to bind him. If a minor has no parent or guardian competent to act for him, he may bind himself, with the approval of the superior court of the county wherein he resides. If the mother of a minor, whether legitimate or illegitimate, marries after his birth, she can not bind him without the approval of such superior court. [*Amended March 21, 1905.*]

Indenture of apprenticeship.

§ 266. Every indenture of apprenticeship [1] must be executed in duplicate, [2] must state the age of the minor, and, except as hereinafter provided, [3] must show that he consented thereto, [4] must be signed by him and the person binding and the master, and when made with the approval

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of the superior court, [5] a certified copy of the order of approval must be attached to the indenture. One copy of the indenture [6] must be delivered to the master and [7] the other kept for the use of the minor by his parent or guardian when executed by him, or, when made with the approval of the court, [8] it must be filed and deposited with the clerk for safekeeping for the use of the minor. No indenture binds the minor after the death of the master, but thereafter the minor may be bound anew. Every indenture entered into otherwise than as herein provided is, as against the apprentice, absolutely void. [*Amended March 21, 1905.*]

Jury trial as to facts of incapacity, etc., of parent.

§ 267. Facts of incapacity, desertion, habitual intemperance, and vagrancy must be decided in said court by a jury, before the indenture can take effect, and an indorsement on the indenture, under seal of the court, that the charge or charges are proved, is sufficient evidence of the mother's power to give such consent; but if the jury does not find the charge or charges to be true, the person at whose instance such proceedings may have been had must pay all costs attending the same. [*Amended March 21, 1905.*]

Apprenticing of poor and homeless minor.

§ 268. When a minor is poor, homeless, chargeable to the county or state, or an outcast, who has no visible means of obtaining an honest livelihood, the superior court may, with his consent, bind him as an apprentice during his minority. Proceedings therefor may be instituted by any citizen, and no fee must be charged by any officer for any act in connection therewith. In all indentures by the court for binding out an orphan or homeless minor as an apprentice there must be inserted among other things, [1] a clause to the following effect: that the master to whom such minor is bound must cause him to be taught to read and write and the ground rules of arithmetic, ratio and proportion, and must give him the requisite instruction in the different branches of his trade or calling, and, [2] at the expiration of his term of service, must give him or her fifty dollars in gold, and [3] two whole new suits of clothes, to be worth in the aggregate at least sixty dollars gold. [*Amended March 21, 1905.*]

Master to keep apprentice within the state.

§ 269. A master must not remove his apprentice out of the state, and must pay and deliver to him the money, clothes, and other property to which he is entitled under the indenture of apprenticeship, to be held by him as his sole property. [*Amended March 21, 1905.*]

Inquiry into treatment of minor apprentices.

§ 270. Parents and guardians and such court must, from time to time, inquire into the treatment of children bound by them respectively, or with their approval, and the judges of such courts are responsible for the charge of apprentices bound by a court or with its approval, and must defend them from all cruelty, neglect, breach of contract, or misconduct on the part of their masters. [*Amended March 21, 1905.*]

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Hearing of complaints of apprentices.

§ 271. The superior court must hear the complaints of apprentices who reside within the county against their masters, alleging [1] undeserved or immoderate correction, [2] insufficient allowance of food, raiment, or lodging, [3] want of instruction in the different branches of their trade or calling, or [4] that they are in danger of being removed out of the state, or [5] any violation of the indenture of apprenticeship, and the court must hear and determine such case and make such order therein as will remove the party in the future. [*Amended March 21, 1905.*]

Power of court to discharge apprentice.

§ 272. The superior court has power, where circumstances require it, [1] to discharge an apprentice from his apprenticeship, and, in case any money or other thing has been paid or contracted to be paid by either party in relation to the apprenticeship, the court must [2] make such order concerning the same as seems just and reasonable. If the apprentice so discharged was originally bound by the superior court, it must, if found necessary, again bind such minor, if under age. [*Amended March 21, 1905.*]

Liability of master for breach of covenant.

§ 273. Every master is liable to an action on the indenture for a breach of any covenant thereof on his part. All damages recovered in such action, after deducting necessary charges in its prosecution, belong to the minor, and must be applied and appropriated to his use by the person recovering it in his behalf, and must be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If no action is brought during the minority of the apprentice, it may be commenced by him in his own name at any time within two years after his coming of age. [*Amended March 21, 1905.*]

Liability of apprentice guilty of gross misbehavior.

§ 274. An apprentice who is guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, is liable to the complaint of his master in the superior court of the county wherein the apprentice resides. Such complaint must set forth the circumstances of the case, and have attached thereto a citation, signed by the clerk of the court, requiring him and all persons who have covenanted in his behalf to appear and answer the complaint within ten days after the service thereof. The complaint and citation must be served in the manner required for serving civil process. When the parties have answered, or when, though they have not answered, the time therefor allowed after the service of the complaint has expired, the court must proceed to hear and determine the cause, and, if the evidence warrants it, may render judgment that the master be discharged from the contract of apprenticeship and for costs of suit. Such costs may be recovered from the parent or guardian of the minor, if there is any who signed the indenture, and execution therefor may issue accordingly. If there is no parent or guardian liable for such cost, execution may be issued therefor against the minor, or the amount thereof may be recovered in an

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action against him after he arrives at full age. He is also liable to the master in an action on the indenture for the breach of any covenant on the part of the apprentice contained therein, committed before the master was discharged from the indenture. [*Amended March 21, 1905.*]

Enticing away apprentices.

§ 275. It is unlawful for any person [1] to entice, counsel, or persuade to run away any apprentice, or [2] to harbor or conceal him, knowing him to be a runaway. Any party so offending is guilty of a misdemeanor, and may be fined not more than one hundred dollars, to be recovered by the master in any court having jurisdiction. [*Amended March 21, 1905.*]

Release of master moving out of state.

§ 276. Whenever any master wishes [1] to remove out of the state, or [2] to quit his trade or business, he must appear with his apprentice before the superior court of the county in which the latter resides, and if the court is satisfied that the master has done justice to the apprentice for the time he has had charge of him, the court has power to discharge the master from the indenture and to again bind the apprentice, if necessary. [*Amended March 21, 1905.*]

Stock of corporations, how represented.

§ 313. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator, and, except when otherwise agreed, all shares of stock standing on the books of a corporation in the name of any person as pledgee or trustee, may be represented or voted by such pledgee or trustee only when such pledger or beneficial owner fails to represent and vote the same. [*Amended March 9, 1911.*]

Married woman may transfer stock.

§ 325. Shares of stock in corporations standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if such married woman were a feme sole. All dividends payable upon any of such shares of stock may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy or power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband. [*Amended March 20, 1905.*]

Minor children, wards, and married women may own stock.

§ 561. Such shares of stock in homestead corporations as may be acquired by children, the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for

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them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands.

Married women and minors may own stock.

§ 575. Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor [in savings and loan corporations].

SOCIETIES FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS.

Formation of humane corporations.

§ 607. Corporations may be formed by any number of persons not less than five, a majority of whom must be citizens and residents of this state, under the general provisions of this code, for the purpose of the prevention of cruelty to children or animals, or both. [*Enacted March 21, 1905.*]

Power to receive and dispose of property.

§ 607a. Every such corporation may take and hold, by gift, purchase, devise, or bequest, any property, real or personal, and dispose of the same at its pleasure; but it must not hold real property the annual income of which exceeds fifty thousand dollars. [*Enacted March 21, 1905.*]

Complaints for violating law.

§ 607b. Any such corporation, or any member or officer thereof, may prefer a complaint against any person or persons, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children or animals, and may aid in the prosecution of any such offender before such court or magistrate in any proceeding taken. [*Enacted March 21, 1905.*]

Magistrates and police officers to aid the corporation.

§ 607c. All magistrates, constables, sheriffs, and officers of police must, as occasion may require, aid any such corporation, its officers, members, and agents, in the enforcement of all laws which are now or may be hereafter enacted relating to or affecting children or animals. [*Enacted March 21, 1905.*]

Preëxisting corporations.

§ 607d. The provisions of this title extend to all corporations heretofore formed and existing for the prevention of cruelty to children or animals, but do not extend or apply to any association, society, or corporation which uses or specifies a name or style the same, or substantially the same, as that of any previously existing society or corporation in this state organized for a like purpose. [*Enacted March 21, 1905.*]

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Fines, penalties, and forfeitures, and their disposition.

§ 607e. All fines, penalties and forfeitures imposed and collected in any city or county, or city and county, of this state under the provisions of any law of this state, now or hereafter enacted, relating to or affecting children or animals, in every case where the prosecution was instituted, aided, or conducted by any corporation or society now or hereafter existing, incorporated or organized for the prevention of cruelty to animals or children must, except where otherwise provided, inure to such corporation or society in aid of the purposes for which it was incorporated or organized. In addition to said fines, penalties and forfeiture, every such society incorporated and organized for the prevention of cruelty to animals, or for the prevention of cruelty to children, may, in each city, or city and county or county where such society exists, while actively engaged in enforcing the provisions of the laws of this state, now or hereafter enacted, for the prevention of cruelty to animals or children, or arresting or prosecuting offenders thereunder, or preventing cruelty to animals or children be paid, as compensation therefor, from the city or county or city and county general fund by the board of supervisors or other governing bodies, a sum not exceeding one hundred and fifty dollars per month in the same manner as other claims against said city or county, or city and county are paid. [*Amended March 24, 1911.*]

Agents may be authorized to act as police officers.

§ 607f. All members and agents, and all officers of each or any of such corporations or societies, as may by the trustees thereof be duly authorized in writing, approved by a judge of the superior court of the county in which such corporation or society was organized, and sworn in the same manner as are constables or peace officers, have power lawfully to interfere to prevent the perpetration of any act of cruelty upon any child or dumb animal, and may use such force as is necessary to prevent the same, and to that end may summon to their aid any bystander. They may make arrests for the violation of any penal law relating to or affecting children or animals in the same manner as a constable or other peace officer; and may carry the same or similar weapons that such officers are authorized to carry; *provided, however,* that in cities of the first class no such member, officer or agent of such societies shall carry such weapon until permission in writing has been first granted to him so to do by the board of police commissioners of said city or cities. All such members and agents must, when making such arrests, exhibit and expose a suitable badge to be adopted by such corporation or society. All persons resisting such specially appointed officers, when performing any duty under this section are guilty of a misdemeanor. [*Enacted March 21, 1905.*]

Children who may be arrested and brought before a court or magistrate for examination.

§ 607g. Any child under the age of sixteen years that comes within any of the following descriptions named:

1. Who is found begging or receiving or gathering alms (whether

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actually begging, or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms;

2. Who is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence;

3. Who is found destitute, either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment;

4. Who frequents the company of reputed thieves or prostitutes, or houses of prostitution or assignation, or dancehouses, concerts, saloons, theaters, or variety halls, or other places of amusement where spirituous, malt, or vinous liquors are sold, without parent or guardian;

5. Who is engaged or used for or in any business, exhibition, vocation, or purpose, in violation of any law of this state;—

Must be arrested and brought before a court or magistrate, and when, upon examination before such court or magistrate, it appears that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid descriptions; or when, upon the examination or conviction of any person having the custody of a child, of a criminal assault upon it, the court or magistrate before whom such examination or conviction is had deems it desirable for the welfare of such child that the person so examined or convicted should be deprived of its custody thereafter; such court or magistrate, when it deems it expedient for the welfare of such child, may commit such child to an orphan asylum, corporation, or society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now is or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. Any corporation, organized under this title, or now existing, for the prevention of cruelty to children, or any officer or member thereof, may institute proceedings under this section for the welfare of such child. [*Enacted March 21, 1905.*]

Membership.

§ 643. Any person of full age and sound mind may become a member of an [building and loan] association by taking one or more shares therein and subscribing to the by-laws, and annexing to his signature his post office address. A minor may hold shares in the name of a parent, guardian, or next friend, as trustee. The shares of stock in any such corporation held by any person, to the extent of one thousand dollars, shall be exempt from execution. [*Amended March 23, 1907.*]

Community property.

§ 687. Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

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Posthumous children.

§ 698. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parents.

Conditions restraining marriage.

§ 710. Conditions [of ownership] imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage. [*Amended March 30, 1874.*]

Lease of lots.

§ 718. No lease or grant of any town or city lot for a longer period than ninety-nine years, in which shall be reserved any rent or service of any kind, shall be valid; *provided,* that the property of any municipality, or any minor or incompetent person, shall not be leased for a longer period than ten years. [*Amended May 1, 1911.*]

Future interests, when defeated.

§ 739. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

Grant by married woman, how acknowledged.

§ 1093. A grant or conveyance of real property made by a married woman may be made, executed, and acknowledged in the same manner and has the same effect as if she were unmarried. [*Amended March 14, 1895.*]

Power of attorney of married woman.

§ 1094. A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or encumbrance of her real or personal estate, which shall have the same effect as if she were unmarried, and may be acknowledged in the same manner as a grant of real property.

Conveyance by married woman.

§ 1187. A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner. [*Amended March 19, 1891.*]

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HOMESTEADS.

Homestead.

§ 1237. The homestead consists of the dwelling-house in which the claimant resides, and the land on which the same is situated, selected as in this title provided. [*Amended March 30, 1874.*]

From what may be selected.

§ 1238. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, within the meaning of section one thousand two hundred and sixty-one, the homestead may be selected from any of his or her property. [*Amended March 30, 1874.*]

From what not.

§ 1239. The homestead can not be selected from the separate property of the wife, without her consent, shown by her making or joining in making the declaration of homestead. [*Amended March 30, 1874.*]

Exempt from forced sale.

§ 1240. The homestead is exempt from execution or forced sale, except as in this title provided.

Subject to.

§ 1241. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises.
2. On debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, materialmen's or vendors' liens upon the premises.
3. On debts secured by mortgages on the premises, executed and acknowledged by husband and wife, or by an unmarried claimant.
4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record. [*Amended March 9, 1887.*]

How conveyed or incumbered.

§ 1242. The homestead of a married person can not be conveyed or incumbered, unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

How abandoned.

§ 1243. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married;
2. By the claimant, if unmarried.

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§ 1244. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

Proceedings on execution against homestead.

§ 1245. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section one thousand two hundred and forty one is levied upon the homestead, the judgment creditor may at any time within sixty days thereafter apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof and if such application shall not be made within sixty days after the levy of such execution the lien of the execution shall cease at the expiration of said period, and no execution based upon the same judgment shall thereafter be levied upon the homestead. [*Amended April 12, 1911.*]

§ 1246. The application must be made upon a verified petition of the judgment creditor showing:

1. The fact that an execution has been levied upon the homestead within sixty days prior to the filing of said petition.

2. A description of the homestead and the name of the claimant.

3. That the value of the homestead exceeds the amount of the homestead exemption.

4. That no previous execution arising out of the same judgment has been levied upon said homestead. [*Amended April 12, 1911.*]

§ 1247. The petition must be filed with the clerk of the superior court. [*Amended April 6, 1880.*]

§ 1248. Within ninety days from the date of filing the petition, a copy thereof, with the notice of the time and place of hearing, must be served upon the claimant or his attorneys at least two days before the hearing; and if such notice shall not be so served, the lien of the execution shall cease at the expiration of said period of ninety days, and no execution based upon the same judgment shall thereafter be levied upon the homestead. [*Amended April 12, 1911.*]

§ 1249. At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead.

§ 1250. The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

§ 1251. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption they must determine whether the land claimed can be divided without material injury.

§ 1252. Within fifteen days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

§ 1253. If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the

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residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

§ 1254. If, from the report, it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption, and that it can not be divided, he must make an order directing its sale under the execution.

§ 1255. At such sale no bid must be received, unless it exceeds the amount of the homestead exemption.

§ 1256. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

Money equal to homestead exemption protected.

§ 1257. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead. [*Amended March 30, 1874.*]

Compensation of appraisers.

§ 1258. The court must fix the compensation of the appraisers, not to exceed five dollars per day each for the time actually engaged.

Costs.

§ 1259. The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in sections twelve hundred and fifty-three and twelve hundred and fifty-four the amount so paid must be added as costs on execution, and collected accordingly.

Who may select homestead.

§ 1260. Homesteads may be selected and claimed:

1. Of not exceeding five thousand dollars in value by any head of a family;

2. Of not exceeding one thousand dollars in value by any other person.

Head of a family defined.

§ 1261. The phrase "head of a family," as used in this title, includes within its meaning:

1. The husband, when the claimant is a married person.

2. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either: (1) His or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband; (2) a minor brother or sister, or the minor child of a deceased brother or sister.

3. A father, mother, grandfather, or grandmother.

4. The father, mother, grandfather, or grandmother of a deceased husband or wife.

5. An unmarried sister, or any other of the relatives mentioned in this section, who have attained the age of majority, and are unable to take care of or support themselves. [*Amended March 9, 1893.*]

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HOMESTEAD OF THE HEAD OF A FAMILY.

Mode of selection.

§ 1262. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record. [*Amended March 30, 1874.*]

Declaration of homestead.

§ 1263. The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family, and, if the claimant is married, the name of the spouse; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;
2. A statement that the person making it is residing on the premises, and claims them as a homestead;
3. A description of the premises;
4. An estimate of their actual cash value. [*Amended March 21, 1905.*]

Declaration must be recorded.

§ 1264. The declaration must be recorded in the office of the recorder of the county in which the land is situated.

Tenure by which homestead is held.

§ 1265. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, or from the separate property of the spouse making the selection or joining therein, the land so selected, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it, or the products, rents, issues or profits thereof be held liable for the debts of the owner, except as provided in this title; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption as provided in this title shall be exempt to the owner of the homestead for a priod of six months next following such sale. [*Amended April 16, 1911.*]

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ALIENATION OF HOMESTEADS OF INSANE PERSONS.

Petition for sale or mortgage.

§ 1269a. In case of a homestead, if either the husband or wife becomes hopelessly insane, the husband or wife not insane may petition the superior court of the county in which such homestead is situated for an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead to raise moneys to satisfy a lien or charge thereon, or to provide for the support and care either of the sane or insane spouse, or of their minor children. Such petition must be subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age, and sex of the children, if any, of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts, in addition to that of the insanity of the husband or wife, relating to the circumstances and necessities of the applicant and his or her family, as he or she may rely upon in support of the petition. [*Enacted March 22, 1905.*]

Notice of application for order.

§ 1269b. Notice of the application for such order must be given by publication of the same, in a newspaper published in the county in which such homestead is situated, if there is a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice must also be personally served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application; and in case there is no such male relative known to the applicant, a copy of such notice must be so served upon the public administrator of the county in which such homestead is situated; and in such case it is the duty of such public administrator to appear and represent the interests of such insane person. For all such services rendered by the public administrator he must be allowed a reasonable fee, to be fixed by the court, and the same must be taxed as costs against the person making application for the order herein provided for. [*Enacted March 22, 1905.*]

When order may be made.

§ 1269c. If it appears to the court that such husband or wife is hopelessly insane, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead, and thereafter any sale, conveyance, or mortgage made in pursuance of such order is as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage. If a sale is ordered it must be reported to and confirmed by the court. Such husband or wife must, before executing any mortgage or conveyance, give a bond, to be approved by the judge of the court, in double the amount of the mortgage, or double the value of the property to be sold, conditioned to account for the proceeds of the mortgage or sale and to apply such proceeds only as the court may direct. [*Enacted March 22, 1905.*]

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WILLS.

Who may make a will.

§ 1270. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in title seven of this part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure.

§ 1271. Repealed.

Will procured by fraud.

§ 1272. A will, or part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

Will of married woman.

§ 1273. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. [*Amended March 30, 1874.*]

What may pass by will.

§ 1274. Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided in sections fourteen hundred and one and fourteen hundred and two.

Who may take by will.

§ 1275. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that corporations other than counties, municipal corporations, and corporations formed for scientific, literary, or solely educational or hospital purposes, can not take under a will, unless expressly authorized by statute; subject, however, to the provisions of section thirteen hundred and thirteen. [*Amended March 21, 1905.*]

Written will.

§ 1276. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign the

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same as a witness, at the end of the will, at the testator's request and in his presence. [*Amended March 21, 1905.*]

An holographic will.

§ 1277. An [h]olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed.

Witness to add residence.

§ 1278. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Mutual will.

§ 1279. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

Competency of subscribing witness.

§ 1280. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

Conditional will.

§ 1281. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

Gifts to subscribing witnesses void.

§ 1282. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

Witness who is a devisee.

§ 1283. If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them. [*Amended March 30, 1874.*]

§ 1284. Repealed.

Will made out of state.

§ 1285. No will made out of this state is valid as a will in this state, unless executed according to the provisions of this chapter, except that a

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will made in a state or country in which the testator is domiciled at the time of his death, and valid as a will under the laws of said state or country, is valid in this state so far as the same relates to personal property, subject, however, to the provisions of section thirteen hundred and thirteen. [*Amended March 21, 1905.*]

§ 1286. Repealed.

Republication by codicil.

§ 1287. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

Nuncupative will.

§ 1288. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

Requisites of a valid nuncupative will.

§ 1289. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect.

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death, or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day.

Proof of nuncupative wills.

§ 1290. No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Probate of nuncupative wills.

§ 1291. No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper.

Written will, how revoked.

§ 1292. Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

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2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Evidence of revocation.

§ 1293. When a will is canceled or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction, must be proved by two witnesses.

§ 1294. Repealed.

Revocation of duplicate.

§ 1295. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

Revocation by subsequent will.

§ 1296. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Antecedent not revived by revocation of subsequent will.

§ 1297. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless after such destruction, cancellation, or revocation, the first will is duly republished.

Revocation by marriage and birth of issue.

§ 1298. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless [1] provision has been made for such issue by some settlement, or [2] unless such issue are provided for in the will, or [3] in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Effect of marriage of a man on his will.

§ 1299. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless [1] provision has been made for her by marriage contract, or [2] unless she is provided for in the will, or [3] in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

Effect of a marriage of a woman on her will.

§ 1300. A will, executed by a woman, is revoked by her subsequent marriage, and is not revived by the death of her husband. [*Amended March 21, 1905.*]

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Contract of sale not a revocation.

§ 1301. An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Mortgage not a revocation of will.

§ 1302. A charge or encumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or encumbrance.

Conveyance, when not a revocation.

§ 1303. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly devested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

When it is a revocation.

§ 1304. If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

Revocation of codicils.

§ 1305. The revocation of a will revokes all its codicils.

Child born after making will, unprovided for, to succeed.

§ 1306. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate. But such succession does not impair or affect the validity of any sale of property made by authority of such will in accordance with the provisions of section fifteen hundred and sixty-one of the Code of Civil Procedure. [*Amended March 21, 1905.*]

Children of testator unprovided for by his will to succeed.

§ 1307. When any testator omits to provide in his will [1] for any of his children, or [2] for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, has the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section. But such suc-

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cession does not impair or affect the validity of any sale of property made by authority of such will in accordance with the provisions of section fifteen hundred and sixty-one of the Code of Civil Procedure. [*Amended March 21, 1905.*]

Share of afterborn child.

§ 1308. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Advancement during lifetime of testator.

§ 1309. If such [1] children, or [2] their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

Death of legatee, before testator.

§ 1310. When any estate is devised or bequeathed to any child, or other relation of the testator, and the devisee or legatee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee or legatee would have done had he survived the testator. [*Amended March 18, 1905.*]

Devises of land, how construed.

§ 1311. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

Will to pass rights acquired after the making.

§ 1312. Any estate, right, or interest, in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease. [*Amended March 30, 1874.*]

Charitable, etc., bequests.

§ 1313. No estate, real or personal, shall be bequeathed or devised [1] to any charitable or benevolent society or corporation, or [2] to any person or persons in trust for charitable uses, except the same be done by will

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duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death such devise or legacy and each of them shall be valid; *provided,* that no such devises or bequests shall collectively exceed one third of the estate of the testator, leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law. [*Enacted March 18, 1874.*]

When child born after testator's death takes under will.

§ 1339. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

Legacies to kindred.

§ 1361. Legacies to husband, widow, or kindred of any class are chargeable [for payment of debts] only after legacies to persons not related to the testator.

SUCCESSION.

Succession defined.

§ 1383. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Intestate's estate, to whom passes.

§ 1384. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court, for the purposes of administration. [*Amended March 30, 1874.*]

§ 1385. Repealed.

Succession and distribution of property.

§ 1386. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing thereof by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of

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representation; but if there is no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living and the issue of the deceased child or children by right of representation;

2. If the decedent leaves no issue, the estate goes one half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other;

3. If there is neither issue, husband, wife, father, nor mother then in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister, by right of representation;

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estates goes to the surviving husband or wife;

5. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote;

6. If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any such other children who are dead, by right of representation;

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

8. If the deceased is a widow, or widower, and leaves no issue, and the estate, or any portion thereof, was common property of such decedent

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and his or her deceased spouse, while such spouse was living, such property goes in equal shares to the children of such deceased spouse and to the descendants of such children by right of representation, and if none, then one half of such common property goes to the father and mother of such decedent in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such decedent and to the decendants of any deceased brother or sister by right of representation, and the other half goes to the father and mother of such deceased spouse in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such deceased spouse and to the descendants of any deceased brother or sister by right of representation. If the estate, or any portion thereof, was separate property of such deceased spouse, while living, and came to such decedent from such spouse by descent, devise, or bequest, such property goes in equal shares to the children of such spouse and to the descendants of any deceased child by right of representation, and if none, then to the father and mother of such spouse, in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such spouse and to the descendants of any deceased brother or sister by right of representation.

9. If the decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivision eight of this section, the same escheats to the state for the support of the common schools. [*Amended March 18, 1907.*]

Illegitimate children to inherit.

§ 1387. Every legitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

Property of illegitimate child is succeeded to, when and how.

§ 1388. The estate of an illegitimate child, who has been legitimated by the subsequent marriage of its parents, or adopted by the father as provided by section two hundred and thirty, and who dies intestate, is succeeded to as if he were born in lawful wedlock. If such child has not been

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so legitimated or adopted, his estate goes to his lawful issue, or, if he leaves no issue, to his mother, or in case of her decease, to her heirs at law. [*Amended March 21, 1905.*]

Degree of kindred, how computed.

§ 1389. The degree of kindred is established by the number of generations, and each generation is called a degree.

§ 1390. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancester, is called the collateral line or collateral consanguinity.

§ 1391. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

§ 1392. In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

§ 1393. In the collateral line the degrees are counted by generations from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computations the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

Relatives of the half blood.

§ 1394. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

Advancements constitute part of distributive share.

§ 1395. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other heir, is a part of the estate of the decedent for the purposes of division and distribution thereof among his heirs, and must be taken by such child, or other heir, toward his share of the estate of the decedent. [*Amended March 21, 1905.*]

Advancements, when too much, or not enough.

§ 1396. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

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What are advancements.

§ 1397. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made; or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

Value of advancements.

§ 1398. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

When heir, advanced to, dies before decedent.

§ 1399. If any child, or other heir receiving advancement, dies before the decedent, leaving heirs, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them. [*Amended March 21, 1905.*]

Inheritance of husband and wife from each other.

§ 1400. The provisions of the preceding sections of this title, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

Distribution of community property on death of wife.

§ 1401. Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition, goes to her descendants, or heirs, exclusive of her husband. [*Amended March 30, 1874.*]

Distribution of common property on death of the husband.

§ 1402. Upon the death of the husband, one half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

Inheritance by representation.

§ 1403. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or

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right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Aliens may inherit.

§ 1404. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

Succession not claimed.

§ 1405. When succession is not claimed as provided in the preceding section, the superior court, on information, must direct the attorney general to reduce the property to his possession or that of the state, or to cause it to be sold, and it or its proceeds to be deposited in the state treasury for the benefit of the person entitled thereto, to be paid to him, if, within five years after such deposit, he appears in the court in which such information was filed and asks for a judgment or order entitling him thereto. [*Amended March 21, 1905.*]

When the property escheats to the state.

§ 1406. When such judgment or order is obtained, a certified copy thereof must be filed with the state treasurer as his voucher. Thereupon the property must be delivered, or the proceeds paid, to the claimant, on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the state, and must be placed by the state treasurer to the credit of the school fund. [*Amended March 21, 1905.*]

Property escheated subject to charge.

§ 1407. Real property passing to the state under the last section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of title eight, part three, of the Code of Civil Procedure.

Successor liable for decedent's obligations.

§ 1408. Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Civil Procedure.

Persons convicted of murder of decedent, not to succeed.

§ 1409. No person who has been convicted of the murder of the decedent shall be entitled to succeed to any portion of his estate; but the portion thereof to which he would otherwise be entitled to succeed descends to the other persons entitled thereto under the provisions of this title.

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Who may contract.

§ 1556. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

Minors, etc.

§ 1557. Minors and persons of unsound mind, have only such capacity as is defined by part one of division one of this code. [*See sections 25-42.*]

Duress.

§ 1569. Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
2. Unlawful detention of the property of any such person; or,
3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

Menace.

§ 1570. Menace consists in a threat:

1. Of such duress as is specified in subdivisions one and three of the last section;
2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,
3. Of injury to the character of any such person.

Contract in restraint of marriage.

§ 1676. Every contract in restraint of the marriage of any person, other than a minor, is void.

What can not be specifically enforced.

§ 3390. The following obligations can not be specifically enforced:

1. An obligation to render personal service;
2. An obligation to employ another in personal service;
3. An agreement to submit a controversy to arbitration;
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so;
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

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CODE OF CIVIL PROCEDURE.

Words and terms defined.

§ 17. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; the word "county" includes "city and county"; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person can not write, his name being written near it by a person who writes his own name as a witness; *provided,* that when a signature is by mark it must, in order that the same may be acknowledged or may serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witness thereto. The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes both real and personal property;
2. The words "real property" are coextensive with lands, tenements, and hereditaments;
3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;
4. The word "month" means a calendar month, unless otherwise expressed;
5. The word "will" includes codicil;
6. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer; and the word "process" a writ or summons issued in the course of judicial proceedings;
7. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and territories;
8. The word "section" whenever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned.
9. The word "affinity" when applied to the marriage relation, signifies the connection existing in consequence of marriage, between each of the married persons and the blood relatives of the other. [*Amended March 13, 1903.*]

NOTE—The Code of Civil Procedure was enacted March 11, 1872. Sections amended or enacted since that date are followed by date of amendment or enactment.

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Probation committee.

§ 131. Subd. 1. The judge of the superior court in and for each county or city and county of the state, or where there are more than one judge of said court, a majority of the judges thereof by an order entered in the minutes of such court, may appoint seven discreet citizens of good moral character, and of either sex, to be known as probation committee, and shall fill all vacancies occurring in such committee. The clerk of said court shall immediately notify each person appointed on said committee and thereupon said persons shall appear before the judge of said superior court in said county and qualify by taking oath, to be entered in the minutes of said superior court, to faithfully perform the duties of a member of such probation committee.

Term of office of committee.

Subd. 2. The members of such probation committee shall hold office for four years, and until their successors are appointed, provided that of those first appointed, one shall hold office for one year, two for two years, two for three years, and two for four years, the terms for which the respective members first appointed shall hold office to be determined by lot as soon after their appointment as may be. When any vacancy occurs in any probation committee by expiration of the term of office of any member thereof, the successor shall be appointed to hold for the term of four years; when any vacancy occurs for any other reason, the appointee shall hold for the unexpired term of his predecessor.

Compensation.

Subd. 3. The members of the probation committee shall serve without compensation.

Committee may examine certain societies, associations, etc.

Subd. 4. The superior court or any judge thereof may at any time require said probation committee or a probation officer to examine into the qualifications and management of any society, association or corporation, other than a state institution, applying to receive any child or children under this act, and to report to the court, provided that nothing in this section shall be construed as giving any probation committee or probation officer any power to enter any institution without the consent of such institution. It shall be the duty of each probation committee prior to December first in each year to prepare a report in writing on the qualifications and management of all societies, associations and corporations, except state institutions, applying for or receiving any child under this act from the courts of their respective counties, and in said report said committee may make such suggestions or comments as to them may seem fit; said report to be filed in the office of the clerk of the court appointing such committee, for the information of the judges thereof.

Probation officer and deputies, appointment of.

Subd. 5. In counties of the first class there shall be one probation officer and not more than five deputy probation officers; in counties of the second class, one probation officer and not more than one deputy probation officer; in all other counties there shall be one probation officer. In any county or

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city and county additional deputy probation officers may be appointed and their appointment approved or disapproved as hereinafter provided, from time to time when in the opinion of the court it may be necessary, provided that they serve without salary.

Expenses allowed probation officers.

Subd. 6. The probation officer and deputy probation officers in all the counties of the state shall be allowed such necessary incidental expenses as may be authorized by a judge of the superior court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the said expenses shall be paid out of the county treasury upon a warrant therefor issued by the said court.

Appointments, by whom and how made.

Subd. 7. The offices of probation officers and deputy probation officers are hereby created. The appointments of probation officers and deputy probation officers to serve hereunder in any county or city and county shall be made by the probation committee of said county or city and county from discreet citizens of good moral character. The appointments by each probation committee shall be made in writing, signed by a majority of the members of such committee, and filed with the county clerk of such county, and shall be subject to and shall take effect upon approval by the judge of the superior court appointing such committee, or by a majority of the judges thereof if there be more than one; such approval to be by order entered in the minutes of said court. The term of office of probation officers and of deputy probation officers shall be two years from the date of the said approval of their several appointments. Such probation officers and deputy probation officers may at any time be removed by the judge approving their appointment in his discretion.

Duty of deputy.

Subd. 8. Any of the duties of the probation officer may be performed by a deputy probation officer and shall be performed by him whenever detailed to perform the same by the probation officer; and it shall be the duty of the probation officer to see that the deputy probation officer performs his duties.

Present officers to serve.

Subd. 9. It is the intention of this act that the same probation committees, the same probation officers and deputy probation officers shall be appointed and serve under this act as under the act known as the juvenile court act, and entitled "An act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their powers and duties; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act, and prescribing the duties of such boards; and providing when proceedings under this act shall be admissible in evidence," and approved February 25, 1903; or under any laws amending or superseding the same.

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Probation officers to inquire into antecedents of persons arrested.

Subd. 10. Either at the time of the arrest for crime of any person over sixteen years of age, or at the time of the plea or verdict of guilty, the probation officer of the county of the jurisdiction of said crime shall, when so directed by the court, inquire into the antecedents, character, history, family environment and offense of such person, and must report the same to the court and file his report in writing in the records of said court. His report shall contain his recommendation for or against the release of such person on probation. If any such person shall be released on probation and committed to the care of the probation officer, such officer must keep a complete and accurate record in suitable books of the history of the case in court and of the name of the probation officer, and his acts in connection with said case; also the age; sex; nativity; residence; education; habits of temperance; whether married or single; and the conduct, employment and occupation and parents' occupation and condition of such person so committed to his care during the term of such probation, and the result of such probation, which record shall be and constitute a part of the records of the court and shall at all times be open to the inspection of the court or any person appointed by the court for that purpose, as well as of all magistrates and the chief of police or other head of the police, unless otherwise ordered by the court. The said books of record shall be furnished by the county clerk of said county, and shall be paid for out of the county treasury.

Terms and conditions of probation.

Subd. 11. The probation officer shall furnish to each person released on probation and committed to his care, a written statement of the terms and conditions of his probation, and shall report to the court, judge, or justice appointing him, any violation or breach of the terms and conditions imposed by such court on the person placed in his care.

Probation officers to serve in all courts.

Subd. 12. The probation officers and deputy probation officers appointed under this section shall serve as such probation officers in all courts having original jurisdiction of criminal actions in this state.

Powers of peace officers.

Subd. 13. Such probation officer and each deputy probation officer shall have, as to the person so committed to the care of such probation officer or deputy probation officer, the powers of a peace officer. [*Amended March 22, 1905.*]

Who may be admitted as attorneys.

§ 275. Any citizen or person resident of this state, who has bona fide declared his or her intention to become a citizen in the manner required by law, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all courts of this state. All

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persons are attorneys of the supreme court who were on the first day of January, eighteen hundred and eighty, entitled to practise in the court superseded thereby. [*Amended April 1, 1880.*]

Certain disabilities excluded from time to commence actions.

§ 328. If a person entitled to commence an action [1] for the recovery of real property, or [2] for the recovery of the possession thereof, or [3] to make any entry or defense founded on the title to real property, or [4] to rents or services out of the same, is, at the time such title first descends or accrues, either:

1. Under the age of majority;
2. Insane;
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than life;

The time, not exceeding twenty years, during which such disability continues is not deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled, who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period. [*Amended March 18, 1903.*]

Exception as to persons under disabilities.

§ 352. If a person entitled to bring an action, mentioned in chapter three of this title, be, at the time the cause of action accrued, either:

1. Within the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; or,
4. A married woman, and her husband be a necessary party with her in commencing such action;

The time of such disability is not a part of the time limited for the commencement of the action.

When a married woman is a party.

§ 370. When a married woman is a party, her husband must be joined with her, except:

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.
2. When the action is between herself and her husband, she may sue or be sued alone.
3. When she is living separate and apart from her husband by reason of his desertion of her, or by agreement, in writing, entered into between them, she may sue or be sued alone.

Wife may defend.

§ 371. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also.

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Infant, etc., to appear by guardian.

§ 372. When an infant, or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending, in each case. A guardian ad litem may be appointed in any case, when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to represent the infant, insane, or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him. [*Amended April 15, 1880.*]

Guardian, how appointed.

§ 373. When a guardian ad litem is appointed by the court, he must be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons, or if under that age, or if he neglect so to apply, then upon the application of a relative or friend of the infant, or of any other party to the action.

3. When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding. [*Amended April 15, 1880.*]

Unmarried female may sue for her own seduction.

§ 374. An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

Father, etc., may sue for seduction of daughter, etc.

§ 375. A father, or, in case of his death or desertion of his family, the mother, may prosecute as plaintiff for the seduction of the daughter, and the guardian for the seduction of the ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterward, and there be no loss of service.

Father, etc., may sue for injury or death of child.

§ 376. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a minor child, and a guardian for the injury or death of his ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury, or death, or if such person be employed by another person who is responsible for his conduct, also against such other person. [*Amended March 24, 1874.*]

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Action, when not to abate by death, etc.

§ 385. An action or proceeding does not abate by the death, or any disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or any disability of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding. [*Amended March 24, 1874.*]

Summons, how served.

§ 411. The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this state: to the president or other head of the corporation, secretary, cashier, or managing agent thereof.

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business and having a managing or business agent, cashier, or secretary within this state: to such agent, cashier, or secretary.

3. If against a minor, under the age of fourteen years, residing within this state: to such minor, personally, and also to his father, mother, or guardian; or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If against a person residing within this state who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed: to such person, and also to his guardian.

5. If against a county, city, or town: to the president of the board of supervisors, president of the council or trustees, or other head of the legislative department thereof.

6. In all other cases to the defendant personally.

Security upon injunctions.

§ 529. On granting an injunction, the court or judge must require, except when it is granted on the application of the people of the state, a county, or a municipal corporation, or a wife against her husband, a written undertaking on the part of the applicant, with sufficient sureties, to the effect that he will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled thereto. Within five days after the service of the injunction, the person enjoined may except to the sufficiency of the sureties, and unless within five days thereafter, upon notice of not less than two days to the person enjoined, such sureties, or others in their place, justify before a

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judge of the court or county clerk at a time and place designated in such notice, the order granting the injunction must be dissolved. [*Amended March 16, 1907.*]

Referees may take securities for purchase money.

§ 777. The referees may take separate mortgages and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, [1] for the shares of any known owner of full age, in the name of such owner; and [2] for the shares of an infant, in the name of the guardian of such infant; and [3] for other shares, in the name of the clerk of the county and his successors in office.

Who may not be purchasers.

§ 783. Neither of the referees, nor any person for the benefit of either of them, can be interested in any purchase; nor can a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section are void.

When unequal partition is ordered.

§ 792. When it appears that partition can not be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered, the court may adjudge compensation to be made by one party to another, on account of the inequality; but such compensation shall not be required [1] to be made to others by owners unknown, [2] nor by an infant, unless it appears that such infant has personal property sufficient for that purpose, and that his interest will be promoted thereby. And in all cases the court has power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

Share of infant may be paid to guardian.

§ 793. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the court.

When guardian necessary, how appointed.

§ 843. When an infant, insane, or incompetent person is a party, he must appear either by his general guardian if he have one, or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice, he must be appointed as follows:

1. If the infant, insane, or incompetent person, be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, or if insane or incompetent, upon the application of a relative or friend.

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2. If the infant, insane, or incompetent person, be defendant, the appointment must be made at the time the summons is returned, or before the answer, upon the application of the infant, if he be of the age of fourteen years and apply at or before the summons is returned; if he be under the age of fourteen, or be insane or incompetent, or neglect so to apply, then upon the application of a relative or friend, or any other party to the action, or by the justice, on his own motion. [*Amended March 26, 1880.*]

Parties defendant.

§ 1164. No person other than the tenant of the premises and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in the proceeding, nor shall any proceding abate, nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant, but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a defendant has become a subtenant of the premises in controversy, after the service of the notice provided for by part two of section eleven hundred and sixty-one of this code, upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action. In case a married woman be a tenant, or a subtenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her can only be enforced against property on the premises at the commencement of the action. All persons who enter the premises under the tenant, after the commencement of the suit, shall be bound by the judgment, the same as if he or they had been made party to the action. [*Amended March 14, 1885.*]

Proceedings after judgment by persons claiming estates.

§ 1272. Within twenty years after judgment in any proceeding had under this title, a person not a party or privy to such proceeding may file a petition in the superior court of the county of Sacramento, showing his claim or right to the property, or the proceeds thereof. A copy of such petition must be served on the attorney general at least twenty days before the hearing of the petition, who must answer the same; and the court thereupon must try the issue as issues are tried in civil actions, and if it is determined that such person is entitled to the property, or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him, or if it has been sold and the proceeds paid into the state treasury, then it must order the controller to draw his warrant on the treasury for the payment of the same, but without interest or cost to the state, a copy of which order, under the seal of the court, shall be a sufficient voucher for drawing such warrant. All persons who fail to appear and file their petitions within the time limited are forever barred; saving, however, to infants, and persons of unsound mind, the right to

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appear and file their petitions at any time within the time limited, or within five years after their respective disabilities cease. [*Amended March 16, 1907.*]

Applications for change of name.

§ 1276. All applications for change of names must be made to the superior court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under twenty-one years of age, if a male, and under the age of eighteen years of age, if a female, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name, and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific, or other corporation, or any corporation bearing or having for its name, or using or being known by the name of any benevolent or charitable order or society, may, by petition, apply to the superior court of the county in which its articles of incorporation were originally filed, or in which the property of such incorporation is situated, for change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition, on behalf of such corporation, the same proceedings shall be had as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any friendly association. [*Amended March 12, 1885.*]

Probate, when conclusive.

§ 1333. If no person, within one year after the probate of a will, contest the same or the validity thereof, the probate of the will is conclusive; saving to infants and persons of unsound mind, a like period of one year after their respective disabilities are removed. [*Amended March 24, 1874.*]

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EXECUTORS AND ADMINISTRATORS.

Who are incompetent as executors.

§ 1350. No person is competent to serve as executor who, at the time the will is admitted to probate, is:

1. Under the age of majority;
2. Convicted of an infamous crime;
3. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity. [*Amended March 16, 1907.*]

Married woman may be executrix.

§ 1352. A married woman may be appointed an executrix. The authority of an executrix, who was unmarried when appointed, is not extinguished nor affected by her marriage. [*Amended March 19, 1891.*]

Letters of administration durante minore ætate.

§ 1354. Where a person absent from the state, or a minor is named executor—if there is another executor who accepts the trust and qualifies—the latter may have letters testamentary and administer the estate until the return of the absentee or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration, with the will annexed must be granted; but the court may, in its discretion, revoke them on the return of the absent executor or the arrival of the minor at the age of majority.

Order of persons entitled to administer.

§ 1365. Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, the relatives of the deceased being entitled to administer only when they are entitled to succeed to his personal estate or some portion thereof; and they are, respectively, entitled thereto in the following order:

1. The surviving husband or wife, or some competent person whom he or she may request to have appointed.
2. The children.
3. The father and mother.
4. The brothers.
5. The sisters.
6. The grandchildren.
7. The next of kin entitled to share in the distribution of the estate.
8. The public administrator.
9. The creditors.
10. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate. This section shall apply to the relatives of the previously deceased spouse of decedent when entitled to succeed to some portion of

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the estate under subdivision eight of section thirteen hundred and eighty-six of the Civil Code. [*Amended March 18, 1907.*]

Preference of persons equally entitled.

§ 1366. Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole to those of the half blood.

When minor or incompetent entitled, who appointed administrator.

§ 1368. If any person entitled to administration is a minor or an incompetent person, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court. [*Amended February 27, 1893.*]

Who are incompetent to act as administrators.

§ 1369. No person is competent or entitled to serve as administrator or administratrix who is:

1. Under the age of majority.
2. Not a bona fide resident of the state.
3. Convicted of an infamous crime.
4. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity. [*Amended April 1, 1878.*]

Married woman may be administratrix.

§ 1370. A married woman may be appointed administratrix. When an unmarried woman appointed administratrix marries, her authority is not thereby extinguished. [*Amended February 24, 1891.*]

Surviving heirs may collect money in bank.

§ 1454. The surviving [1] husband, or wife of any deceased person, or, if no husband or wife is living, then [2] the children of such decedent, may, without procuring letters of administration, collect of any bank any sum which said deceased may have left on deposit in such bank at the time of his or her death; *provided,* such deposit shall not exceed the sum of five hundred dollars. Any bank, upon receiving an affidavit stating [1] that said depositor is dead, and [2] that affiant is the surviving husband or wife, as the case may be, or [3] stating that decedent left no husband or wife, and that affiant is, or affiants are the children of said decedent, and [4] that the whole amount that decedent left on deposit in any and all banks of deposit in this state does not exceed the sum of five hundred dollars, may pay to said affiant or affiants any deposit of said decedent, if the same does not exceed the sum of five hundred dollars, and the receipt of such affiant is sufficient acquittance therefor. [*Enacted March 16, 1907.*]

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SUPPORT OF FAMILY.

Widow and minor children may remain in decedent's house, etc.

§ 1464. When a person dies leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent, and are also entitled to a reasonable provision for their support, to be allowed by the superior court, or a judge thereof. [*Amended April 16, 1880.*]

All property exempt from execution to be set apart for use of family.

§ 1465. Upon the return of the inventory, or at any subsequent time during the administration, the court may on petition therefor, set apart for the use of the surviving husband or wife, or, in case of his or her death, to the minor children of the decedent, all the property exempt from execution, including the homestead selected, designated, and recorded; provided such homestead was selected from the common property, or from the separate property, of the persons selecting or joining in the selection of the same. If none has been selected, designated, and recorded, or in case the homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the court must select, designate and set apart, and cause to be recorded, a homestead for the use of the surviving husband or wife and the minor children; or if there be no surviving husband or wife, then for the use of the minor children, in the manner provided in article two of this chapter, out of the common property, or if there be no common property, then out of the real estate belonging to the decedent. [*Amended March 20, 1909.*]

Petition to set aside exempt property.

§ 1465a. When the petition mentioned in the preceding section is filed the clerk of the court must set the petition for hearing by the court and give notice thereof by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the petitioner, the nature of the application and the time at which the same will be heard. Such notice must be given at least ten days before the hearing, and a copy thereof must be mailed at least ten days before the day appointed for the hearing to the executor or administrator, if he be not the petitioner, and to any person named as co-executor or co-administrator not petitioning, addressed to them at their places of residence, if known, and if not known, then to the county seat of the county where the proceedings are pending. Proof of such posting and mailing must be made at the hearing. [*Enacted March 20, 1909.*]

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May make extra allowance.

§ 1466. If the property set apart is insufficient for the support of the widow and children, or either, the court or a judge thereof must take such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration. [*Amended March 23, 1907.*]

Payment of allowance.

§ 1467. Any allowance made by the court or judge, in accordance with the provisions of this article, must be paid in preference to all other charges, except funeral charges and expenses of administration; and any such allowance, whenever made, may, in the discretion of the court or judge, take effect from the death of the decedent.

Property set apart, how apportioned between widow and children.

§ 1468. When property, other than the homestead selected and recorded during the lifetime, of the decedent, is set apart to the use of the family, in accordance with the provisions of this chapter, such property, if the decedent left a surviving spouse and no minor child, is the property of such spouse. If the decedent left also a minor child or children, the one half of such property belongs to the surviving spouse, and the remainder to the child, or in equal shares to the children, if there are more than one. If there is no surviving spouse, the whole belongs to the minor child or children. If the property set apart is a homestead, selected from the separate property of the decedent, the court can set it apart only for a limited period, to be designated in the order, and, subject to such homestead right, the property remains subject to administration. [*Amended March 23, 1907.*]

Administration when estate does not exceed fifteen hundred dollars.

§ 1469. If a deceased person leave a widow or minor child or minor children and upon the return of the inventory of the estate of such deceased person it shall appear to the court or a judge thereof by the verified petition of the personal representative of such deceased person or of his widow or of his minor children or child or of the guardian of such minor children or of any of them that the net value of the whole estate of said deceased over and above all liens or incumbrances of record at the date of the death of said deceased does not exceed the sum of fifteen hundred dollars, the court, or a judge thereof shall, by order, require all persons interested to appear on a day fixed to show cause why the whole of said estate should not be assigned for the use and support of the family of the deceased. Notice thereof shall be given and proceedings had in the same manner as provided in sections one thousand six hundred and thirty-three, one thousand six hundred and thirty-five and one thousand six hundred and thirty-eight of this code. If, upon the hearing, the court finds that the net value of the estate over and above all liens or encumbrances of record at

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the date of death of said deceased does not exceed the sum of fifteen hundred dollars, it shall, by decree for that purpose, assign to the widow of the deceased, if there be a widow, or if there be no widow, then to the minor children of the deceased, if there be minor children, the whole of the estate, subject to whatever mortgages, liens, or encumbrances there may be upon said estate at the time of the death of said deceased, after the payment of the expenses of the last illness of the deceased, funeral charges, and expenses of administration, and the title thereof shall vest absolutely in such widow if there is a widow or if there is no widow in the minor children or child, subject to whatever mortgages, liens or encumbrances there may be upon said estate at the time of the death of the deceased, and there must be no further proceedings in the administration, unless further estate be discovered. [*Amended March 25, 1911.*]

THE HOMESTEAD.

Rights of survivor to homestead.

§ 1474. If the homestead selected by the husband and wife, or either of them, during their coverture, and recorded while both were living, was selected from the community property, or from the separate property of the person selecting or joining in the selection of the same, it vests, on the death of the husband or wife, absolutely in the survivor. If the homestead was selected from the separate property of either the husband or the wife, without his or her consent, it vests, on the death of the person from whose property it was selected, in his or her heirs, subject to the power of the superior court to assign it for a limited period to the family of the decedent. In either case it is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except as provided in the Civil Code. [*Amended April 16, 1880.*]

Selected and recorded homestead set off to person entitled.

§ 1475. If the homestead selected and recorded prior to the death of the decedent be returned in the inventory appraised at not exceeding five thousand dollars in value, or was previously appraised as provided in the Civil Code, and such appraised value did not exceed that sum, the superior court must, by order, set it off to the persons in whom title is vested by the preceding section. If there be subsisting liens or encumbrances on the homestead, the claims secured thereby must be presented and allowed as other claims against the estate. If the funds of the estate be adequate to pay all claims against the estate, the claims so secured must be paid out of such funds. If the funds of the estate be not sufficient for that purpose, the claims so secured shall be paid proportionately with other claims allowed, and the liens or encumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such ment. [*Amended April 16, 1880.*]

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When homestead exceeds $5,000 in value.

§ 1476. If the homestead, as selected and recorded, be returned in the inventory appraised at more than five thousand dollars, the appraisers must, before they make their return, ascertain and appraise the value of the homestead at the time the same was selected, and if such value exceeded five thousand dollars, or if the homestead was appraised as provided in the Civil Code, and such appraised value exceeded that sum, the appraisers must determine whether the premises can be divided without material injury, and if they find that they can be thus divided, they must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling-house, as will amount in value to the sum of five thousand dollars, and make report thereof, giving the metes, bounds, and full description of the portion set apart as a homestead. If the appraisers find that the premises exceeded in value, at the time of their selection, the sum of five thousand dollars, and that they can not be divided without material injury, they must report such finding, and thereafter the court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto. [*Amended March 24, 1874.*]

Report of the appraisers.

§ 1477. Any two of the appraisers concurring may discharge the duties imposed upon the three, and make the report. A dissenting report may be made by the third appraiser. The report must state fully the acts of the appraisers. Both reports may be heard and considered by the court in determining a confirmation or rejection of the majority report, but the minority report must in no case be confirmed.

Confirming or rejecting report of appraisers—Appeal.

§ 1478. When the report of the appraisers is filed, the court must set a day for hearing any objections thereto, from any one interested in the estate. Notice of the hearing must be given for such time, and in such manner as the court may direct. If the court be satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the court may appoint new appraisers to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of their report, as upon the first report. [*Amended March 24, 1874.*]

Limitation of actions for vacating sale, etc.

§ 1573. No action for the recovery of any estate sold by an executor or administrator, under the provisions of this chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after the settlement of the final account of the executor or administrator. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud, or other grounds upon which the action is based. [*Amended April 16, 1880.*]

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To what cases preceding section not to apply.

§ 1574. The preceding section shall not apply to minors or others under any legal disability, to sue at the time when the right of action first accrues; but all such persons may commence an action at any time within three years after the removal of the disability.

MORTGAGES AND LEASES OF REAL ESTATE.

Mortgage of real property of decedent, minor, etc. Lease.

§ 1577. Whenever, in any estate now being administered, or that may hereafter be administered, it shall appear to the superior court, or a judge thereof, to be for the advantage of the estate to raise money upon a note or notes to be secured by a mortgage of the real property of any decedent, or of a minor, or an incompetent person, or any part thereof, or to make a lease of said realty, or any part thereof, or to agree to sell a claim, or mining claims, or real property worked as a mine, the court or judge, as often as occasion therefor shall arise in the administration of any estate, may on a petition, notice, and hearing as provided in this article, authorize, empower and direct the executor or administrator, or guardian of such minor or incompetent person, to mortgage such real estate, or any part thereof, and to execute a note or notes to be secured by such mortgage, or to lease such real estate, or any part thereof, or to enter into an agreement to sell such real estate, or any part thereof. [*Amended March 19, 1909.*]

Proceedings to obtain order.

§ 1578. To obtain an order to mortgage such realty, the proceedings to be taken and the effect thereof shall be as follows:

What petition must show.

First—The executor or administrator of any estate, or guardian of any minor or incompetent person, or any person interested in the estates of such decedents, minors, or incompetent persons, may file a verified petition showing:

1. The particular purpose or purposes for which it is proposed to make the note or notes and mortgage, which shall be either to maintain the ward and his family or to maintain and educate the ward when a minor, or to pay the debts, legacies, or charges of administration, or to pay, reduce, extend, or renew some lien or mortgage already subsisting on said realty or some part thereof; or, if the application be made by the guardian of any minor or incompetent person, to erect, alter or repair buildings or other structures upon, or otherwise to improve, the realty proposed to be mortgaged, or some part thereof.

2. A statement of the facts and circumstances showing the insufficiency of the income of the estate under guardianship to maintain the ward and his family or to maintain and educate the ward when a minor and the debts, legacies, charges of administration, liens or mortgages to be paid, reduced, extended, or renewed, as the case may be; or, if the application

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be made by the guardian of any minor or incompetent person for the purpose of improving the realty or some part thereof, the condition and value of all the real and personal property then belonging to the estate, a statement of all debts and obligations secured or unsecured outstanding against the estate, and the character and estimated cost of the buildings, structures or other improvements proposed to be erected, altered or repaired with the proceeds of the mortgage.

3. The advantage that may accrue to the estate from raising the required money by note or notes and mortgage or providing for the payment, reduction, extension, or renewal of the subsisting liens or mortgages, as the case may be; or, if the application be made by the guardian of a minor or incompetent person for the purpose of improving the realty belonging to the estate or some part thereof, the advantage that will accrue to the estate by the making of such improvements.

4. The amount to be raised, with a general description of the property proposed to be mortgaged; and,

5. The names of the legatees and devisees, if any, and of the heirs of the deceased, or of the minor, or of the incompetent person, as the case may be, so far as known to the petitioner.

Order to appear.

Second—Upon filing such petition, an order shall be made by the court or judge, requiring all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than four nor more than ten weeks thereafter, then and there to show cause why the realty (briefly indicating it), or some part thereof, should not be mortgaged for the amount mentioned in the petition (stating such amount), or such lesser amount as to the court or judge shall seem meet, and referring to the petition on file for further particulars.

Service of order.

Third—The order to show cause may be personally served on the persons interested in the estate, at least ten days before the time appointed for hearing the petition, or may be published for four successive weeks in a newspaper of general circulation, published in the county.

Hearing of petition.

Fourth—At the time and at the place appointed in the order to show cause, or at such other time and place to which the hearing may be postponed (the power to make all needful postponements being hereby vested in the court or judge), having first received satisfactory proof of personal service or publication of the order to show cause, the court or judge must proceed to hear the petition and any objections that may be filed or presented thereto. Upon such hearing, witnesses may be compelled to attend and testify, in the same manner, and with like effect, as in other cases; and if, after a full hearing, the court or judge is satisfied that it will be for the advantage of the estate to mortgage the whole or any portion of the real estate, an order must be made authorizing, empowering, and directing the executor or administrator, or the guardian of such minor or incom-

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petent person, to make such mortgage, and a promissory note or notes to the lender, for the amount of the loan, to be secured by said mortgage; the order may direct that a lesser amount than that named in the petition be borrowed, and may prescribe the maximum rate of interest and period of the loan, and may direct in what coin or currency it shall be paid, and require that the interest and the whole or any part of the principal be paid, from time to time, out of the whole estate or any part thereof, and that any buildings on the premises to be mortgaged shall be insured for further security of the lender, and the premiums paid from such income.

Executor to execute note and mortgage.

Fifth—After the making of the order to mortgage, the executor, administrator, or guardian of a minor or of an incompetent person shall execute and deliver a promissory note or notes for the amount and period specified in the order, and shall execute, acknowledge, and deliver a mortgage of the premises, setting forth in the mortgage that it is made by authority of the order, and giving the date of such order. A certified copy of the order shall be recorded in the office of the county recorder of every county in which the incumbered land, or any portion thereof, lies. The note or notes and mortgage shall be signed by the executor, administrator, or guardian as such, and shall create no personal liability against the person so signing.

Effect of such mortgage.

Sixth—Every note or notes and mortgage so made shall be effectual to mortgage and hypothecate all the right, title, interest, and estate which the decedent, minor, or incompetent person had in the premises described therein at the time of the death of such decedent, or at the time of the appointment of the guardian of such minor or of such incompetent person, or prior thereto, had any right, title, or interest in said premises acquired by the estate of such decedent, minor, or incompetent person, by operation of law or otherwise, since the time of the death of such decedent, or the appointment of the guardian of such minor or incompetent person. Jurisdiction of the court to administer the estate of such decedent, minor, or incompetent person shall be effectual to vest such court and judge with jurisdiction to make the order for the note or notes and mortgage, and such jurisdiction shall conclusively inure to the benefit of the mortgagee named in the mortgage, his heirs and assigns. No irregularity in the proceedings shall impair or invalidate the same or the note or notes and mortgage given in the pursuance thereof, and the mortgagee, his heirs and assigns, shall have and possess the same rights and remedies on the note or notes and mortgage as if it had been made by the decedent prior to his death, the minor after reaching the age of maturity, or the incompetent person when legally competent; *provided, however*, that upon any foreclosure, if the proceeds of the encumbered property are insufficient to pay the note or notes, and mortgage, no judgment or claim for any deficiency or such proceeds to satisfy the note or notes and mortgage, or the costs or expenses of sale, shall be had or allowed, except in cases where the note or notes and mortgage were given to pay, reduce, extend, or renew a lien

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or mortgage subsisting on the realty, or some part thereof, at the time of the death of the decedent, and the indebtedness secured by such lien or mortgage was an allowed and approved claim against his estate, or a lien upon the interest of the minor in said real estate at the time it was vested in him, or upon the estate of the incompetent at the time the incompetency of the incompetent person was so declared by the court; *and provided, also,* that in cases affecting the estate of the deceased persons, the part of the indebtedness remaining unsatisfied must be classed and paid with other demands against the estate, as provided in article three, chapter ten, of title eleven, part three, of this code, with respect to mortgages subsisting at the time of death. [*Amended March 23, 1907.*]

Manner of obtaining order to lease.

§ 1579. To obtain an order to lease the realty, the proceedings to be taken and the effect thereof shall be as follows:

First—The executor, administrator, guardian of a minor or an incompetent person, or any person interested in the estates of such decedents, minors or incompetent persons, must file a verified petition showing:

a. The advantage or advantages that may accrue to the estate from giving a lease.

b. A general description of the property proposed to be leased.

c. The term, rental, and general conditions of the proposed lease.

d. The names of the legatees and devisees, if any, and of the heirs of the deceased, or of the minor, or of the incompetent person, so far as known to the petitioner.

Second—Upon filing such petition an order shall be made by the court or judge requiring all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than two nor more than four weeks thereafter, then and there to show cause why the realty (briefly indicating it) should not be leased for the period (stating it), at the rental mentioned in the petition (stating it), and referring to the petition on file for further particulars.

Third—The order to show cause may be personally served on the persons interested in the estate at least ten days before the time appointed for hearing the petition, or it may be published for two successive weeks in a newspaper of general circulation in the county.

Fourth—At the time and place appointed to show cause, or at such other time and place to which the hearing may be postponed (the power to make all needful postponements being hereby vested in the court or judge), the court or judge having first received satisfactory proof of personal service or publication of the order to show cause, must proceed to hear the petition, and any objection that may have been filed or presented thereto. Upon such hearing witnesses may be compelled to attend and testify in the same manner and with like effect as in other cases, and the court may, in its discretion, appoint one or more, not exceeding three, disinterested persons to appraise the rental value of the premises, and direct that a reasonable compensation for the services, not exceeding five dollars per day, be paid by the estate. If, after a full hearing, the court or judge is satisfied that

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it will be for the advantage of the estate to lease the whole or any portion of the real estate, an order must be made authorizing, empowering and directing the executor, administrator, or the guardian, to make such lease. The order may prescribe the minimum rental or royalty to be received for the premises, and the period of the lease which must in no case be longer than for ten years, and may prescribe the other terms and conditions of such lease; *provided*, that, for the purpose of exploiting for minerals, or mineral oils or petroleum and extracting minerals therefrom, the period of the lease may be for twenty years.

Fifth—After the making of the order to lease, the executor, administrator, or guardian of a minor or of an incompetent person, shall execute, acknowledge, and deliver a lease of the premises for the term and period and with the conditions specified in the order, setting forth in the lease that it is made by authority of the order, and giving the date of such order. A certified copy of the order shall be recorded in the office of the county recorder of every county in which the leased land or any portion thereof lies.

Sixth—Every lease so made shall be effectual to demise and let, at the rent, for the term, and upon the conditions therein prescribed, the premises described therein. Jurisdiction of the court to administer the estate of the decedent, the minor, or of the incompetent person shall be effectual to vest such court and judge with jurisdiction to make the order for the lease, and such jurisdiction shall conclusively inure to the benefit of the lessee, his heirs and assigns. No omission, error, or irregularity in the proceedings shall impair or invalidate the same, or the lease made in pursuance thereof. [*Amended March 20, 1909.*]

Service of process on guardian.

§ 1722. Whenever an infant, insane, or incompetent person has a guardian of his estate residing in this state, personal service upon the guardian of any process, notice, or order of the court concerning the estate of a deceased person in which the ward is interested, is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do. [*Amended April 16, 1880.*]

Disposition of life estates.

§ 1723. If any person has died or shall hereafter die who at the time of his death was the owner of a life estate which terminates by reason of the death of such person, or if such person at the time of his death was one of the spouses owning lands as a homestead, which lands by reason of the death of such person, vest in the surviving spouse; or if such person was a married woman who at the time of her death was the owner of community property which passed upon her death to the surviving husband; any person interested in the property, or in the title thereto, in which such estates or interests were held, may file in the superior court of the county

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in which the property is situated, his verified petition setting forth such facts, and thereupon and after such notice by publication or otherwise, as the court may order, the court shall hear such petition and the evidence offered in support thereof, and if upon such hearing it shall appear that such life estate of such deceased person absolutely terminated by reason of his death, or such homestead or community property vested in the survivor of such marriage, the court shall make a decree to that effect, and thereupon a certified copy of such decree may be recorded in the office of the county recorder, and thereafter shall have the same effect as a final decree of distribution so recorded. [*Amended March 18, 1905.*]

GUARDIANS OF MINORS.

Superior court to appoint guardians.

§ 1747. The superior court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the county, or who reside without the state and have estate within the county. Such appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if fourteen years of age. Before making such appointment, the court must cause such notice as such court deems reasonable to be given to any person having the care of such minor, and to such relatives of the minor residing in the county as the court may deem proper. In all such proceedings, when it appears to the satisfaction of the court, either from a verified petition, or from affidavits, that the welfare of the minor will be imperiled if such minor is allowed to remain in the custody of the person then having the care of such minor, the court may make an order providing for the temporary custody of such minor until a hearing can be had on such petition; and when it appears to the court that there is reason to believe that such minor will be carried out of the jurisdiction of the court before which the application is made, or will suffer some irreparable injury before compliance with such order providing for the temporary custody of such minor can be enforced, such court may at the time of making such order providing for the temporary custody of such minor cause a warrant to be issued, reciting the facts, and directed to the sheriff, coroner, or constable of the county, commanding such officer to take such minor from the custody of the person in whose care such minor then is and place such minor in custody in accordance with the order of the court. [*Amended March 18, 1903.*]

When minor may nominate guardian.

§ 1748. If the minor is under the age of fourteen years, the court may nominate and appoint his guardian. If he is fourteen years of age, he may nominate his own guardian, who, if approved by the court, must be appointed accordingly. [*Amended April 15, 1880.*]

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When appointment may be made by court.

§ 1749. If the guardian nominated by the minor is not approved by the court, or if the minor resides out of the state, or if, after being duly cited by the court, he neglects for ten days to nominate a suitable person, the court or judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years. [*Amended April 15, 1880.*]

Nomination of minors after arriving at fourteen.

§ 1750. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court. [*Amended March 23, 1907.*]

Who may be guardian.

§ 1751. The father or the mother of a minor child under the age of fourteen years, if found by the court competent to discharge the duties of guardianship, is entitled to be appointed a guardian of such minor child, in preference to any other person. The person nominated by a minor of the age of fourteen years as his guardian, whether married or unmarried, may, if found by the court competent to discharge the duties of guardianship, be appointed as such guardian. The authority of a guardian is not extinguished nor affected by the marriage of the guardian. [*Amended March 19, 1891.*]

§ 1752. Repealed.

Powers and duties of guardian.

§ 1753. Every guardian appointed has the custody and care of the education of the minor and the care and management of his estate, until such minor arrives at the age of majority or marries, or until the guardian is legally discharged, unless he is appointed guardian only of the person of the ward. In that event, the guardian is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place in the state, but not elsewhere without the permission of the court. [*Amended March 23, 1907.*]

Bond of guardian.

§ 1754. Before the order appointing any person guardian under this chapter takes effect, and before letters issue, the court must require of such person a bond to the minor with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law, and the following conditions shall form a part of such bond without being expressed therein:

1. To make an inventory of all the estate, real and personal, of his ward, that comes to his possession or knowledge, and to return the same within such time as the court may order.

2. To dispose of and manage the estate according to law and for the best

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interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

3. To render an account on oath of the property, estate, and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court directs, and at the expiration of his trust to settle his accounts with the court, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto.

Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form the letters of guardianship must be substantially the same as letters of administration, and the oath of the guardian must be indorsed thereon that he will perform the duties of his office as such guardian according to law. [*Amended April 15, 1880.*]

Court may insert conditions in order appointing guardian.

§ 1755. When any person is appointed guardian of a minor, the court may, with the consent of such person, insert in the order of appointment, conditions not otherwise obligatory, providing for the care, treatment, education, and welfare of the minor and for the care and custody of his property. The performance of such conditions shall be a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond shall be responsible. [*Amended February 10, 1899.*]

Letters of guardianship to be recorded.

§ 1756. All letters of guardianship issued and all guardian's bonds executed under the provisions of this chapter, with the affidavits and certificates thereon, must be recorded by the clerk of the court having jurisdiction of the persons and estates of the wards. [*Amended April 15, 1880.*]

Maintenance of minor out of income of his own property.

§ 1757. If any minor having a father living has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian. [*Amended April 15, 1880.*]

Guardian to give bond.

§ 1758. Every testamentary guardian must qualify and has the same powers and must perform the same duties with regard to the person and estate of his ward as guardians appointed by the court, except so far as his powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed, and except that such guardian

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need not give bond unless directed to do so by the court from which the letters of guardianship issue. [*Amended February 27, 1903.*]

Power of courts to appoint guardians not impaired.

§ 1759. Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein.

Transfer of proceedings from one county to another.

§ 1760. The superior court of any county in this state in which is now pending, or in which there may be hereafter commenced, any proceeding which has for its object the guardianship of the estate of any minor or insane or incompetent person, or the guardianship of the person of any minor or insane or incompetent person, or both the guardianship of the estate and the guardianship of the person of a minor or insane or incompetent person, may make an order transferring such proceeding to the superior court of any other county in this state, in the manner herein provided; except that no such proceeding shall be transferred to the court of any county which at the time of such proceeding would not have jurisdiction to issue original letters in such matter or proceeding. To obtain an order for such removal, the guardian of the person or estate, or both, of such minor or insane or incompetent person, shall file in the superior court of the county where such proceeding is pending, a verified petition setting forth the following matters:

1. The name of the county to the superior court of which it is sought to remove such proceedings;

2. The name of the county or counties in which the ward resides and that in which the guardian resides;

3. The name of the county or counties in which the property of such ward is situated, and a designation of the character and condition thereof;

4. The reasons for such removal;

5. The names and residences, so far as they are known to said guardian, of any relatives of such minor ward residing in said county in which said proceeding is pending;

6. The names and residences, so far as the same are known to said guardian, of the relatives within the third degree of such insane or incompetent ward residing in said county.

Upon filing such petition an order shall be made by the court or judge fixing a time for hearing said petition, which shall be not less than five days thereafter, and directing that a copy of such order be sent through the United States mail to each of the said relatives of such minor or insane or incompetent ward, named in said petition as resident in the county in which said proceeding is pending. The court may require such other or further notice of said hearing as it may deem proper. At the time fixed for the hearing of said petition any relatives of such ward, or any person interested in the estate of such ward, may appear and file written grounds of opposition to said petition. If after hearing the evidence of the petitioner, and contestant if any, it shall appear to the court that it is for the best interest and advantage of said ward, or of the estate

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of said ward that the removal of said proceeding be had to the court designated in said petition, or to the superior court of any other county, it shall enter an order directing the removal thereof to said court and directing the clerk to forward all papers on file therein to the clerk of the court to which said proceeding has been ordered removed, and thereafter the court to which said proceeding has been removed shall have jurisdiction of all proceedings therein as fully as if said proceeding has been originally begun in said court. The clerk of the court to which said proceeding is removed shall be entitled to receive a fee of six dollars on filing the papers transmitted to him, in addition to the expense of such transmission, payable on receipt of the papers by him. [*Enacted March 18, 1905.*]

When power of guardian is superseded.

§ 1760[a]. The power of a guardian appointed by a court is superseded:

1. By order of the court;
2. If the appointment was made solely because of the ward's minority, by his attaining majority;
3. The guardianship over the person of the ward, by the marriage of the ward. [*Enacted March 23, 1907.*]

Guardian of estate of minor, etc.

§ 1761. At any time after the issuance of letters of guardianship upon the estate of any minor, insane or incompetent person, any relative of the ward, or the attorney for such relative, may serve upon the guardian, or upon the attorney for the guardian, and file with the clerk of the court wherein administration of such ward's estate is pending, a written request, stating that he desires special notice of any or all of the following mentioned matters, steps or proceedings in the administration of said estate, to wit:

1. Filing of petitions for sales, leases or mortgages of any property of the ward's estate.
2. Filing of accounts.
3. Filing of application for removal of ward's property to any foreign jurisdiction.
4. Filing of petitions for partition of any property of the ward's estate.
5. Proceedings for removal, suspension or discharge of the guardian, or final determination of the guardianship. Such request shall state the post office address of such relative, or his attorney, and thereafter a brief notice of the filing of any of such petitions, applications, or accounts, or proceedings, except petitions for sale of perishable property, or other personal property which will incur expense or loss by keeping, shall be addressed to such relative, or his attorney, at his stated post office address, and [1] deposited in the United States post office with the postage thereon prepaid, within two days after the filing of such petition, account, application, or the commencement of such proceeding; [2] or personal service of such notices may be made on such relative, or his attorney, within said two days, and such personal service shall be equivalent to such deposit in the

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post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of any such matter. If, upon the hearing it shall appear to the satisfaction of the court that the said notice has been regularly given, the court shall so find in its order or judgment, and such judgment shall be final and conclusive upon all persons. [*Enacted March 10, 1909.*]

THE POWERS AND DUTIES OF GUARDIANS.

Guardian to pay debts of ward out of ward's estate.

§ 1768. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all debts due from the ward out of his personal estate and the income of his real estate if sufficient, if not, then out of his real estate upon obtaining an order for the sale or mortgage thereof, and dispose of the same in the manner provided in this title for the sale of real estates of decedents. [*Amended March 23, 1907.*]

§ 1768[a]. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from the ward, out of his personal estate, and the income of his real estate, if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided in article four of this chapter. [*Amended March 23, 1907.*]

Guardian to recover debts due his ward.

§ 1769. Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the court, compound for the same and give discharges to the debtor, on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person be appointed for that purpose. [*Amended April 15, 1880.*]

Guardian to manage his estate.

§ 1770. Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell or mortgage the real estate, upon obtaining an order of the court therefor, as provided, and must apply the proceeds of such sale or mortgage, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any. [*Amended February 28, 1901.*]

Maintenance, support, and education of ward.

§ 1771. When a guardian has advanced for the necessary maintenance, support, or education of his ward, an amount not disproportionate to the value of his estate or his condition of life, and the same is made to ap-

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pear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support, or education for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request, supplies a ward with such suitable and necessary maintenance, support, or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

Guardians, powers of, in partition.

§ 1772. The guardian may join in and assent to a partition of the real or personal estate of the ward, wherever such assent may be given by any person; *provided,* that such assent can only be given after the court having jurisdiction over said estate shall grant an order conferring such authority, which order shall only be made after a hearing in open court upon the petition of the guardian after notice of at least ten days, mailed by the clerk of the court to all the known relatives of the ward residing in the county where the proceedings are pending. The guardian may also consent to a partition of the real or personal estate of his ward without action, and agree upon the share to be set off to such ward, and may execute a release in behalf of his ward to the owners of the shares, of the parts to which they may be respectively entitled, upon obtaining from said court having jurisdiction over said estate, authority to so consent after a hearing in open court upon the petition of the guardian after notice of at least ten days, mailed by the clerk of the court to all the known relatives of the ward residing in the county where the proceedings are pending. [*Amended March 27, 1899.*]

Guardian to return inventory of estate.

§ 1773. Every guardian must return to the court a verified inventory of the estate of his ward within three months after his appointment. He must annually thereafter, and at such other times as directed by the court, render a verified account of the estate of his ward. All the estate of the ward described in the first inventory must be appraised by appraisers appointed, sworn, and acting in the manner provided for regulating the settlement of the estates of decedents. Such inventory, with the appraisement of the property therein described, must be recorded by the clerk of the court in a proper book kept in his office for that purpose. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to, or acquired by any ward, or for his benefit, the like proceedings must be laid for the return and appraisement thereof as are herein provided in relation to the first inventory and return. [*Amended March 23, 1907.*]

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Settlements of guardians.

§ 1774[a]. The guardian must upon the expiration of a year from the time of his appointment and as often thereafter as he may be required, present his account to the court for settlement and allowance, *provided*, that no final account of the guardian of any insane person, who is or has been during such guardianship confined in a state hospital in this state, shall be settled or allowed unless notice of the settlement of said account shall have been first given to the secretary of the state commission in lunacy. [*Amended March 13, 1909.*]

Allowance of accounts of joint guardians.

§ 1775. When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same upon the oath of any of them. [*Amended April 15, 1880.*]

Expenses and compensation of guardian.

§ 1776. Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable. He must also be allowed all reasonable and proper disbursements, made after the legal termination of the guardianship, but while that relation, by consent or acquiescence of the parties, still subsists in fact, and before the discharge of the guardian by the court, and which were made by the consent, express or implied, of the ward, and for his benefit or the benefit of his estate. [*Amended March 23, 1907.*]

SALE OF PROPERTY AND DISPOSITION OF THE PROCEEDS.

May sell property in certain cases.

§ 1777. When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, his guardian may sell his real or personal estate, or mortgage the real estate for that purpose, upon obtaining an order therefor. [*Amended February 28, 1901.*]

Sale of real estate to be made upon order of court.

§ 1778. When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold, and the proceeds thereof put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor.

Application of proceeds of sales.

§ 1779. If the estate is sold for the purposes mentioned in this article, the guardian must apply the proceeds of the sale to such purposes, as far

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as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investment of proceeds of sales.

§ 1780. If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the court. [*Amended April 15, 1880.*]

Order for sale, how obtained.

§ 1781. To obtain an order for such sale, the guardian must present to the court in which he was appointed guardian a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale. [*Amended April 15, 1880.*]

Notice to next of kin.

§ 1782. If it appear to the court, or a judge thereof, from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court must thereupon make an order directing the next of kin to the ward, and all persons interested in the estate, to appear before the court, at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary or would be beneficial to the ward to sell the personal estate, or some part of it, the court must order the sale to be made. [*Amended April 15, 1880.*]

Copy of order to be served.

§ 1783. A copy of the order must be personally served on the next of kin of the ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or must be published at least once a week for three successive weeks in a newspaper printed in the county, or if there be none printed in the county, then in such newspaper as may be specified by the court in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published. [*Amended April 15, 1880.*]

Hearing of application.

§ 1784. The court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proofs and allegations of the petitioner, and of the next of kin, and of all other persons

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interested in the estate who oppose the application. [*Amended April 15, 1880.*]

Who may be examined on such hearing.

§ 1785. On the hearing, the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance, and testimony may be issued by the court, in the same manner and with like effect as in other cases provided for in this title. [*Amended April 15, 1880.*]

Costs to be awarded, to whom.

§ 1786. If any person appears and objects to the granting of any order prayed for under the provisions of this article, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

Order of sale, to specify what.

§ 1787. If, after a full examination, it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof should be sold, the court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

Bond before selling.

§ 1788. Every guardian authorized to sell real estate, must, before the sale, give bond to the ward, with sufficient surety, to be approved by the court, or a judge thereof, with condition to sell the same in the manner, and to account for the proceeds of the sale as provided for in this chapter and chapter seven of this title. [*Amended April 15, 1880.*]

Proceedings for sales of property to conform to chapter seven of this title.

§ 1789. All the proceedings under petition of guardians for sales of property of their wards, giving notice and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, accounting and the settlement of accounts, must be had and made as required by the provisions of this title concerning estates of decedents, unless otherwise specially provided in this chapter.

Proceedings for the completion of contracts for sale of real estate by guardians.

§ 1789a. All proceedings for the completion of contracts for the sale of real estate by guardians must be had and made as required by the provisions of this title concerning the conveyance of real estate by executors and administrators under sections fifteen hundred and ninety-seven to

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sixteen hundred and seven inclusive, of this code, and said sections are hereby made applicable to conveyances by guardians as provided by section eighteen hundred and ten *a*.

Repealing clause. Sec. 2. All acts and parts of acts inconsistent with this act are hereby repealed. [*Enacted April 19, 1909.*]

Limit of order of sale.

§ 1790. No order of sale granted in pursuance of this article continues in force more than one year after granting the same, without a sale being had.

Conditions of sales of real estate of minor heirs.

§ 1791. All sales of real estate of wards must be for cash, or for part cash and part deferred payments, the credit in no case to exceed three years from date of sale, as in the discretion of the court is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers, in case of deferred payments, notes, and a mortgage on the real estate sold, with such additional security as the court deems necessary and sufficient to secure the prompt payment of the amounts so deferred, and the interest thereon. [*Amended April 15, 1880.*]

Court may order investment of money of ward.

§ 1792. The court, on the application of a guardian, or any person interested in the estate of any ward, after such notice to persons interested therein as the court shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein, and the court may make such other orders and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require. [*Amended April 15, 1880.*]

NON-RESIDENT GUARDIANS AND WARDS.

Guardians of non-resident persons.

§ 1793. The superior court may appoint a guardian of the person and estate, or either, of a minor, insane or incompetent person, who has no guardian within the state, legally appointed by will, deed or otherwise, and who resides without the state and has estate within the county or, who, though not having such estate, is within the county, upon petition of any friend of such person or any one interested in his estate, in expectancy or otherwise. Before making such appointment, the court must cause notice to be given to all persons interested, in such manner as such court deems reasonable. [*Amended March 23, 1907.*]

Powers and duties of guardians.

§ 1794. Every guardian, appointed under the preceding section, has the same powers and performs the same duties, with respect to the estate of

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the ward found within this state, and with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

Such guardians to give bonds.

§ 1795. Every guardian must give bond to the ward, in the manner and with the like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, must be confined to such estate and effects as come to his hands in this state.

To what guardianship shall extend.

§ 1796. The guardianship which is first lawfully granted of any person residing without this state extends to all the estate of the ward within this state, and excludes the jurisdiction of the court of every other county. [*Amended April 15, 1880.*]

Removal of non-resident ward's property.

§ 1797. When the guardian and ward are both non-residents, and the ward is entitled to property in this state, which may be removed to another state or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the state or foreign country of the residence of the ward, upon the application of the guardian to the superior court of the county in which the estate of the ward, or the principal part thereof, is situated. [*Amended April 15, 1880.*]

Proceedings on such removal.

§ 1798. The application must be made upon ten days' notice to the resident executor, administrator, or guardian, if there be such, and upon such application the non-resident guardian must produce and file a certificate, under the hand of the clerk and seal of the court, from which his appointment was derived, showing:

1. A transcript of the record of his appointment.
2. That he has entered upon the discharge of his duties.
3. That he is entitled, by the laws of the state of his appointment, to the possession of the estate of the ward; or, must produce and file a certificate, under the hand and seal of the clerk of the court having jurisdiction in the country of his residence, of the estates of persons under guardianship, or of the highest court of such country, attested by a minister, consul, or vice-consul of the United States, resident in such country, that, by the laws of such country, the applicant is entitled to the custody of the estate of his ward, without the appointment of any court. Upon such application, unless good cause to the contrary is shown, the court must make an order granting to such guardian leave to take and remove the property of his ward to the state or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his ward. [*Amended April 15, 1880.*]

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Discharge of person in possession.

§ 1799. Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the clerk of the court a receipt therefor of a foreign guardian of such absent ward, and transmitting a duplicate receipt, or a certified copy of such receipt, to the court from which such non-resident guardian received his appointment. [*Amended March 8, 1895.*]

GENERAL AND MISCELLANEOUS PROVISIONS.

Examination of persons suspected of defrauding wards.

§ 1800. Upon complaint made by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, smuggled, or fraudulently disposed of, any of the money, goods, or effects, or an instrument in writing belonging to the ward or to his estate, the superior court may cite such suspected person to appear before such court, and may examine and proceed against him on such charge in the manner provided in this title with respect to persons suspected of and charged with concealing, embezzling, smuggling, or fraudulently disposing of the effects of a decedent. [*Amended March 23, 1907.*]

Removal and resignation of guardian.

§ 1801. When a guardian, appointed either by the testator or a court, becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the superior court may, upon such notice to the guardian as the court may require, remove him and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the court may appoint another in the place of the guardian who resigned or was removed. [*Amended April 15, 1880.*]

Guardianship, how terminated.

§ 1802. The marriage of a minor ward terminates the guardianship of the person of such ward, but not the estate; and the guardian of an insane or other person may be discharged by the court, when it appears on the application of the ward or otherwise, that the guardianship is no longer necessary. [*Amended April 15, 1880.*]

New bond, when required.

§ 1803. The court may require a new bond to be given by a guardian whenever such court deems it necessary, and may discharge the existing sureties from further liability, after due notice given as such court may direct, when it shall appear that no injury can result therefrom to those interested in the estate. [*Amended April 15, 1880.*]

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Guardian's bond to be filed.

§ 1804. Every bond given by a guardian must be filed and preserved in the office of the clerk of the superior court of the county, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward, or of any person interested in the estate. [*Amended April 15, 1880.*]

Limitation of actions on guardian's bond.

§ 1805. No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of such discharge the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

Limitation of actions for recovery of property sold.

§ 1806. No action for the recovery of any estate, sold by a guardian, can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal thereof.

More than one person may be appointed.

§ 1807. The court, in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, each of whom must give a separate bond, and be governed and liable in all respects as a sole guardian. [*Amended March 23, 1907.*]

Order appointing guardian.

§ 1808. Any order appointing a guardian, must be entered as and become a decree of the court. The provisions of this title relative to the estates of decedents, so far as they relate to the practice in the superior court, apply to proceedings under this chapter. [*Amended April 15, 1880.*]

Sections 1056 and 1057 apply to guardians.

§ 1809. The provisions of sections ten hundred and fifty-six and ten hundred and fifty-seven are hereby declared to apply to guardians appointed by the court, and to the bonds taken or to be taken from such guardians, and to the sureties on such bonds. [*Amended March 23, 1907.*]

Guardian of incompetent.

§ 1810. When a person who is bound by a contract in writing to convey any real estate shall afterwards and before making the conveyance become and be adjudged to be an incompetent person, the court may make a decree authorizing and directing his guardian to convey such real estate to the person entitled thereto. Such decree may be made under the provisions of sections fifteen hundred and ninety-seven to sixteen hundred and seven, both inclusive, of this code, all of which provisions are hereby

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incorporated in this section; the word incompetent being substituted for the word deceased or decedent and the word guardian being substituted for the words administrator or executor, respectively, wherever said words occur. [*Enacted March 16, 1903.*]

Conveyances by guardians.

§ 1810a. When a person who is bound by contract in writing to convey any real estate, or to transfer any personal property, dies before making conveyance or transfer, and in all cases when such decedent, if living might be compelled to make such conveyance or transfer, the court, having jurisdiction of the guardianship proceedings of such minor may make a decree authorizing and directing the guardian of any minor who has succeeded by distribution to the estate of such deceased person to convey or transfer such real estate or personal property to the person entitled thereto. [*Enacted March 15, 1911.*]

SOLE TRADERS.

Who may become sole traders.

§ 1811. A married woman may become a sole trader by the judgment of the superior court of the county in which she has resided for six months next preceding the application. [*Amended February 26, 1881.*]

Notice, how given and what to contain.

§ 1812. A person intending to make application to become a sole trader must publish notice of such intention in a newspaper published in the county, or if none, then in a newspaper published in an adjoining county, once a week for four successive weeks. The notice must specify the day upon which application will be made, the nature and place of the business proposed to be conducted by her, and the name of her husband. [*Amended February 26, 1881.*]

Petition.

§ 1813. Ten days prior to the day named in the notice, the applicant must file a verified petition setting forth:

1. That the application is made in good faith, to enable the applicant to support herself, or herself and others dependent upon her, giving their names and relation;

2. The fact of insufficient support from her husband, and the causes thereof, if known;

3. Any other grounds of application which are good causes for a divorce, with the reason why a divorce is not sought; and

4. The nature of the business proposed to be conducted, and the capital to be invested therein, if any, and the sources from which it is derived.

May have $500 of community or husband's property.

§ 1814. The applicant may invest in the business proposed to be conducted, a sum derived from the community property or of the separate property of the husband, not exceeding five hundred dollars.

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Who may oppose it, and how.

§ 1815. Any creditor of the husband may oppose the application, by filing in the court (prior to the day named in the notice) a written opposition verified, containing either:

1. A specific denial of the truth of any material allegation of the petition; or setting forth,

2. That the application is made for the purpose of defrauding the opponent; or,

3. That the application is made to prevent, or will prevent, him from collecting his debt.

Trial or hearing.

§ 1816. On the day named in the notice, or on such other day to which the hearing may be postponed by the court, the applicant must make proof of publication of the notice hereinbefore required, and the issues of fact joined, if any, must be tried as in other cases; if no issues are joined, the court must hear the proofs of the applicant and find the facts in accordance therewith.

Decree.

§ 1817. If the facts found sustain the petition, the court must render judgment authorizing the applicant to carry on in her own name and on her own account the business specified in the notice and petition.

Oath, copy of order to be recorded.

§ 1818. The sole trader must make and file with the clerk of the court an affidavit, in the following form:

"I, A. B., do, in presence of Almighty God, solemnly swear that this application was made in good faith, for the purpose of enabling me to support myself (and any dependent, such as husband, parent, sister, child, or the like, naming them, if any), and not with any view to defraud, delay, or hinder any creditor or creditors of my husband; and that of the moneys so to be used by me in business, not more than five hundred dollars have come either directly or indirectly from my husband. So help me God."

A certified copy of the decree, with this oath indorsed thereon, must be recorded in the office of the recorder of the county where the business is to be carried on, in a book to be kept for such purpose.

Rights and liabilities of sole traders.

§ 1819. When the judgment is made and entered, and a copy thereof, with the affidavit provided for in section one thousand eight hundred and eighteen, duly recorded, the person therein named is entitled to carry on the business specified, in her own name, and the property, revenues, moneys, and credits so by her invested, and the profits thereof, belong exclusively to her, and are not liable for any debts of her husband, and she, thereafter, has all the privileges of, and is liable to all legal processes provided for debtors and creditors, and may sue and be sued alone without being joined with her husband; *provided, however,* that she shall not be at liberty to carry on said business in any other county than that named in the notice

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provided for in section one thousand eight hundred and twelve, until she has recorded in such other county a copy of said judgment and affidavit. [*Amended March 16, 1876.*]

Sole trader must maintain her children.

§ 1820. A married woman who is adjudged a sole trader is responsible and liable for the maintenance of her minor children.

Husband of sole trader not liable for debts.

§ 1821. The husband of a sole trader is not liable for any debts contracted by her in the course of her sole trader's business, unless contracted upon his written consent.

ESTATES OF MISSING PERSONS.

Trustees of the estates of missing persons.

§ 1822. Whenever any resident of this state, who owns or is entitled to the possession of any real or personal property situate therein, is missing, or his whereabouts unknown, for ninety days, and a verified petition is presented to the superior court of the county of which he is a resident by his wife or any of his family or friends, representing that his whereabouts has been, for such time, and still is, unknown, and that his estate requires attention, supervision, and care of ownership, the court must order such petition to be filed, and appoint a day for its hearing, not less than ten days from the date of the order. The clerk of the court must thereupon publish, for at least ten days prior to the day so appointed, a notice in some newspaper published in the county, stating that such petition will be heard at the court room of the court at the time appointed for the hearing. The court may direct further notice of the application to be given in such manner and to such persons as it may deem proper. At the time so fixed for such hearing, or at any subsequent time to which the hearing may be postponed, the court must hear the petition and the evidence offered in support of or in opposition thereto, and, if satisfied that the allegations thereof are true, and that such person remains missing, and his whereabouts unknown, must appoint some suitable person to take charge and possession of such estate, and manage and control it under the direction of the court. In appointing a trustee, the court must prefer the wife of the missing person (if any such there is), or her nominee, and, in the absence of a wife, some person, if such there is who is willing to act, entitled to participate in the distribution of the missing person's estate were he dead. [*Enacted March 20, 1907.*]

Bonds to be given by trustees.

§ 1822a. Every person appointed under the provisions of the preceding section must give bond in the amount and as provided for in section thirteen hundred and eighty-eight. [*Enacted March 20, 1907.*]

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Powers and duties of trustees.

§ 1822b. The trustee must take possession of the real and personal estate in this state of such missing person, and collect and receive the rents, income, and proceeds thereof, collect all indebtedness owing to him, and pay the expenses thereof out of the trust funds, and pay such indebtedness of the missing person as may be authorized by the court. The court may direct the trustee to pay to the person or persons constituting the family of the missing person such sum or sums of money for family expenses and support from the income of the estate as it may, from time to time, determine. The trustee must from time to time, when directed by the court, account to and with it for all his acts as trustee, and the court may, at any time, upon good cause shown, remove any trustee, and appoint another in his place. [*Enacted March 20, 1907.*]

Persons who can not testify.

§ 1880. The following persons can not be witnesses:

1. Those who are of unsound mind at the time of their production for examination.

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator upon a claim, or demand against the estate of a deceased person, as to any matter or fact occurring before the death of such deceased person. [*Amended April 16, 1880.*]

PERSONS CAN NOT BE EXAMINED IN CERTAIN RELATIONS.

§ 1881. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person can not be examined as a witness in the following cases:

Husband and wife.

1. A husband can not be examined for or against his wife without her consent; nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other; or in an action brought by husband or wife against another person for the alienation of the affections of either husband or wife or in an action for damages against another person for adultery committed by either husband or wife.

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Attorney and client.

2. An attorney can not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of his employer, concerning any fact the knowledge of which has been acquired in such capacity.

Confessor and confessant.

3. A clergyman or priest can not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

Physician and patient.

4. A licensed physician or surgeon can not, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient; *provided, however,* that after the death of the patient, the executor of his will, or the administrator of his estate, or the surviving spouse of the deceased, or, if there be no surviving spouse, the children of the deceased personally, or, if minors, by their guardian, may give such consent, in any action or proceeding brought to recover damages on account of the death of the patient, caused by the negligent or wrongful act of another.

Public officer.

5. A public officer can not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure. [*Enacted April 26, 1911.*]

Specification of conclusive presumptions.

§ 1962. The following presumptions, and no others, are deemed conclusive:

1. A malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another;

2. The truth of the facts recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration;

3. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it;

4. A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

5. The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate;

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6. The judgment or order of a court, when declared by this code to be conclusive; but such judgment or order must be alleged in the pleadings if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence.

7. Any other presumption which, by statute, is expressly made conclusive.

Agreements not in writing, when invalid.

§ 1973. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement, can not be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section twenty-seven hundred and ninety-four of the Civil Code;

3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accepts or receives part of such goods and chattels or the evidences, or some of them, of such things in action, or pays at the time some part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale-book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

7. An agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath any property, or to make any provision for any person by will. [*Amended March 18, 1907.*]

In action for divorce, admission not sufficient.

§ 2079. In an action for divorce on the ground of adultery, a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a judgment of divorce.

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PENAL CODE.

Persons who are capable of committing crimes.

§ 26. All persons are capable of committing crimes except those belonging to the following classes:

1. Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness;
2. Idiots;
3. Lunatics and insane persons;
4. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent;
5. Persons who committed the act charged without being conscious thereof;
6. Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;
7. Married women (except for felonies) acting under the threats, command, or coercion of their husbands;
8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe their lives would be endangered if they refused. [*Amended March 30, 1874.*]

Who are principals in crime.

§ 31. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

Fraudulent pretenses relative to birth of infant.

§ 156. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate, or to receive a share of any personal estate, with

NOTE—The Penal Code was enacted February 14, 1872. Sections amended or enacted since that date are followed by date of amendment or enactment.

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intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the state prison not exceeding ten years.

Substituting one child for another.

§ 157. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the state prison not exceeding seven years.

Advertising to procure divorce.

§ 159a. Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage or appear or act as attorney, counsel, or referee in any suit for alimony or divorce, or the severance, dissolution, or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section does not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state. [*Enacted March 21, 1905.*]

Selling intoxicating liquors near university.

§ 172a. Every person who, upon or within one and one half miles of the university grounds or campus, upon which are located the principal administrative offices of any university having an enrollment of more than one thousand students, more than five hundred of whom reside or lodge upon such university grounds or campus, sells, gives away, or exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor; *provided, however,* that the provisions of this act shall not apply to nor prohibit the sale of any of said liquors by any regularly licensed pharmacist who shall maintain a fixed place of business in said territory, upon the written prescription of a physician regularly licensed to practice medicine under the laws of the State of California, when such prescription is dated by the physician issuing it, contains the name of the person for whom the prescription is written, and is filled for such person only and within forty-eight hours of its date; *provided, further,* that the provisions of this act shall not apply to nor prohibit the sale of any of said liquors for chemical or mechanical purposes. [*Enacted March 25, 1909.*]

Infringement of personal liberty.

§ 181. Every person who holds, or attempts to hold, any person in involuntary servitude, or assumes, or attempts to assume, rights of ownership over any person, or who sells, or attempts to sell, any person to an-

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other, or receives money or anything of value, in consideration of placing any person in the custody, or under the power or control of another, or who buys or attempts to buy, any person, or pays money, or delivers anything of value, to another, in consideration of having any person placed in his custody, or under his power or control, or who knowingly aids or assists in any manner any one thus offending, is punishable by imprisonment in the state prison not less than one nor more than ten years. [*Enacted March 16, 1901.*]

Degrees of murder.

§ 189. All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murders are of the second degree. [*Amended March 30, 1874.*]

Punishment of murder.

§ 190. Every person guilty of murder in the first degree, shall suffer death or confinement in the state prison for life, at the discretion of the jury trying the same; or upon a plea of guilty, the court shall determine the same; and every person guilty of murder in the second degree, is punishable by imprisonment in the state prison not less than ten years. [*Amended March 28, 1874.*]

Petty treason abolished.

§ 191. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter.

Excusable homicide.

§ 195. Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

Justifiable homicide.

§ 197. Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to com-

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mit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony, or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Justifiable and excusable homicide not punishable.

§ 199. The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Kidnaping defined.

§ 207. Every person who forcibly steals, takes, or arrests any person in this state, and carries him into another country, state, or county, or into another part of the same county, or who forcibly takes or arrests any person, with a design to take him out of this state, without having established a claim, according to the laws of the United States, or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person; and every person who, being out of this state, abducts or takes by force or fraud any person contrary to the law of the place where such act is committed, and brings, sends, or conveys such person within the limits of this state, and is afterwards found within the limits thereof, is guilty of kidnaping. [*Amended March 21, 1905.*]

Punishment for kidnaping.

§ 208. Kidnaping is punishable by imprisonment in the state prison not less than one nor more than ten years.

Kidnaping—Penalty.

§ 209. Every person who maliciously, forcibly, or fraudulently takes or entices away any person with intent to restrain such person and thereby to commit extortion or robbery, or exact from the relatives or friends of such person any money or valuable thing, is guilty of a felony, and shall be punished therefor by imprisonment in the state's prison for life, or any number of years not less than ten. [*Enacted March 6, 1901.*]

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Assault with intent to commit rape.

§ 220. Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, is punishable by imprisonment in the state prison, not less than one nor more than fourteen years.

Administering stupefying drugs.

§ 222. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anæsthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony.

Assault with caustic chemicals.

§ 244. Every person who wilfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

§ 261. Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of sixteen years;
2. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where she resists, but her resistance is overcome by force or violence;
4. Where she is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating narcotic, or anæsthetic substance, administered by or with the privity of the accused;
5. Where she is at the time unconscious of the nature of the act, and this is known to the accused;
6. Where she submits under the belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief. [*Amended March 27, 1897.*]

When physical ability must be proved.

§ 262. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

Penetration sufficient.

§ 263. The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

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Punishment of rape.

§ 264. Rape is punishable by imprisonment in the state prison not less than five years.

Abduction of women.

§ 265. Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison not less than two nor more than fourteen years.

Seduction for purposes of prostitution.

§ 266. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution; or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [*Amended March 30, 1874.*]

Taking female for purpose of prostitution.

§ 266a. Every person who, within this state, takes any female person against her will and without her consent, or with her consent procured by fraudulent inducement or misrepresentation, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars. [*Enacted March 21, 1905.*]

Taking female by force to live in illicit relation.

§ 266b. Every person who takes any female person unlawfully, and against her will, and by force, menace, or duress, compels her to live with him in an illicit relation, against her consent, or to so live with any other person, is punishable by imprisonment in the state prison not less than two nor more than four years. [*Enacted March 21, 1905.*]

Bringing Chinese or Japanese women for purpose of selling.

§ 266c. Every person bringing to, or landing within this state, any female person born in the empire of China or the empire of Japan, or the islands adjacent thereto, with intent to place her in charge or custody of any other person, and against her will to compel her to reside with him, or for the purpose of selling her to any person whomsoever, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than six nor more than twelve months. [*Enacted March 21, 1905.*]

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Placing female in custody for purpose of cohabitation.

§ 266d. Any person who receives any money or other valuable thing for or on account of his placing in custody any female for the purpose of causing her to cohabit with any male to whom she is not married, is guilty of a felony. [*Enacted March 21, 1905.*]

Paying for female for purpose of prostitution.

§ 266e. Every person who purchases, or pays any money or other valuable thing for, any female person for the purpose of prostitution, or for the purpose of placing her, for immoral purposes, in any house or place against her will, is guilty of a felony. [*Enacted March 21, 1905.*]

Selling female for immoral purposes.

§ 266f. Every person who sells any female person or receives any money or other valuable thing for or on account of his placing in custody, for immoral purposes, any female person, whether with or without her consent, is guilty of a felony. [*Enacted March 21, 1905.*]

Placing one's wife in house of prostitution.

§ 266g. Every man who, by force, intimidation, threats, persuasion, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at or consents to, or permits, the placing or leaving of his wife in a house of prostitution, or allows or permits her to remain therein, is guilty of a felony and punishable by imprisonment in the state prison for not less than three nor more than ten years; and in all prosecutions under this section a wife is a competent witness against her husband. [*Enacted March 21, 1905.*]

Abduction.

§ 267. Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars.

Seduction.

§ 268. Every person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment in the state prison for not more than five years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment. [*Enacted February 15, 1889.*]

When intermarriage is bar to prosecution.

§ 269. The intermarriage of the parties subsequent to the commission of the offense is a bar to a prosecution for a violation of the last section; *provided,* such marriage take place prior to the finding of an indictment or the filing of an information charging such offense. [*Enacted February 15, 1889.*]

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Adultery.

§ 269a. Every person who lives in a state of cohabitation and adultery is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both. [*Amended March 21, 1911.*]

Adultery of married persons.

§ 269b. If two persons, each being married to another, live together in a state of cohabitation and adultery, each is guilty of a felony, and punishable by imprisonment in the state prison not exceeding five years. A recorded certificate of marriage or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purpose of this action. [*Amended March 21, 1911.*]

ABANDONMENT AND NEGLECT OF CHILDREN.

Omitting to provide child with necessaries.

§ 270. A parent who wilfully omits, without lawful excuse, to furnish necessary food, clothing, shelter or medical attendance for his child, is punishable by imprisonment in the state prison, or in the county jail, not exceeding two years, or by fine not exceeding one thousand dollars, or by both. [*Amended March 10, 1909.*]

Non-support of wife.

§ 270a. Every husband having sufficient ability to provide for his wife's support, or who is able to earn the means of such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter or medical attendance, unless by her misconduct he was justified in abandoning her, is punishable by imprisonment in the state prison, or in the county jail, not exceeding two years, or by fine not exceeding one thousand dollars, or by both. [*Amended March 10, 1909.*]

Surety for support.

§ 270b. After arrest and before plea or trial, or after conviction or plea of guilty and before sentence under either section 270 or 270a of this code, if the defendant shall appear before the court and enter into an undertaking with sufficient sureties to the people of the State of California in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will pay to the person having custody of such child or to such wife, such sum per month as may be fixed by the court in order to thereby provide said minor child or said wife, as the case may be, with necessary food, clothing, shelter, or medical attendance, then the court may suspend proceedings or sentence therein; and said undertaking is valid and binding for six months; and upon the failure of defendant to comply with said undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had in said action or why sentence should not be imposed, whereupon the court may proceed with said action, or pass sentence, or for good cause shown may modify

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the order and take a new undertaking and further suspend proceedings or sentence for a like period. [*Amended March 10, 1909.*]

Failure of adult child to provide for parent.

§ 270c. Every adult child, who having the ability so to do, fails to provide necessary food, clothing, shelter, or medical attendance for an indigent parent, is guilty of a misdemeanor. [*Enacted March 6, 1909.*]

Fine may be paid to wife or child.

§ 270d. In any case where there is a conviction and sentence under the provisions of either section 270 or section 270*a*, of this code should a fine be imposed such fine may be directed by the court to be paid in whole or in part to the wife of the defendant or guardian or custodian of the child or children of such defendant. [*Enacted April 6, 1911.*]

Proof of marriage, etc.

§ 270e. No other evidence shall be required to prove marriage of husband and wife, or that a person is the lawful father or mother of a child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under either section 270 or 270*a* of this code any existing provisions of law prohibiting the disclosure of confidential communications between husband and wife shall not apply, and both husband and wife shall be competent to testify to any and all relevant matters, including the fact of marriage and the parentage of a child or children. Proof of the abandonment and non-support of a wife, or of the omission to furnish necessary food, clothing, shelter, or of medical attendance for a child or children is prima facie evidence that such abandonment and non-support or omission to furnished necessary food, clothing, shelter or medical attendance is wilful. [*Enacted April 6, 1911.*]

Deserting child.

§ 271. Every parent of any child under the age of fourteen years, and every person to whom any such child has been confided for nurture, or education, who deserts such child in any place whatever with intent wholly to abandon it, is punishable by imprisonment in the state prison or in the county jail not exceeding one year or by fine not exceeding five hundred dollars, or by both. [*Amended March 11, 1909.*]

Penalty for abandonment.

§ 271a. Every person who knowingly and wilfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of fourteen years, or who falsely, knowing the same to be false, represents to any manager, officer or agent of any orphan asylum or charitable institution for the care of orphans, that any child for whose admission into such asylum or institution application has been made is an orphan, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both. [*Amended March 11, 1909.*]

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Person selling, apprenticing, etc., children.

§ 272. Any person, whether as parent, relative, guardian, employer, or otherwise, having the care, custody, or control of any child under the age of sixteen years, who exhibits, uses, or employs, or in any manner, or under any pretense, sells, apprentices, gives away, lets out, or disposes of any such child to any person, under any name, title, or pretense, for or in any business, exhibition, or vocation, injurious to the health or dangerous to the life or limb of such child, or in or for the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever, or for or in any obscene, indecent or immoral purposes, exhibition, or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or who causes, procures, or encourages such child to engage therein, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Nothing in this section contained applies to or affects the employment or use of any such child, as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music; or the employment of any child as a musician at any concert or other musical entertainment, on the written consent of the mayor of the city or president of the board of trustees of the city or town where such concert or entertainment takes place. [*Amended March 22, 1905.*]

Person receiving, hiring, etc., children.

§ 273. Every person who takes, receives, hires, employs, uses, exhibits, or has in custody, any child under the age, and for any of the purposes mentioned in the preceding section, is guilty of a like offense, and punishable by a like punishment as therein provided. [*Enacted March 22, 1905.*]

Unjustifiable punishment of child.

§ 273a. Any person who wilfully causes or permits any child to suffer, or who inflicts thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, causes or permits the life or limb of such child to be endangered, or the health of such child to be injured, and any person who wilfully causes or permits such child to be placed in such situation that its life or limb may be endangered, or its health likely to be injured, is guilty of a misdemeanor. [*Enacted March 22, 1905.*]

Child not to be confined.

§ 273b. No child under the age of sixteen years must be placed in any prison, or place of confinement, or in any court room, or in any vehicle for transportation to any place, in company with adults charged with or convicted of crime, except in the presence of a proper official. [*Enacted March 22, 1905.*]

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Fines, how appropriated.

§ 273c. All fines, penalties, and forfeitures imposed and collected under the provisions of the five preceding sections, or under the provisions of any law relating to, or affecting, children, in every case where the prosecution is instituted or conducted by a society incorporated under the laws of this state for the prevention of cruelty to children, inure to such society in aid of the purposes for which it is incorporated. [*Enacted March 22, 1905.*]

Court may commit child to charitable institution.

§ 273d. When, upon examination before a court or magistrate, it appears that any child under the age of sixteen years has been found begging, whether actually begging or under the pretext of selling anything, or wandering and not having any settled place of abode, or proper guardianship, or visible means of subsistence; or destitute, or frequenting the company of reputed thieves, or prostitutes or houses of prostitution or assignation, dance houses, concert saloons, theaters, or places where spirituous liquors are sold; or engaged in any business, exhibition, or vocation mentioned in section two hundred and seventy-two; or in the custody of any person convicted of a criminal assault upon it; the court or magistrate may, when it deems it expedient for the welfare of such child, commit it to an orphan asylum, society for the prevention of cruelty to children, or other charitable institution, or make such other disposition thereof as now is or may hereafter be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. [*Enacted March 22, 1905.*]

Minor not to deliver messages, etc., to certain places.

§ 273e. Every telephone, special delivery company or association, and every other corporation or person engaged in the delivery of packages, letters, notes, messages, or other matter, and every manager, superintendent, or other agent of such person, corporation, or association, who sends any minor in the employ or under the control of any such person, corporation, association, or agent, to the keeper of any house of prostitution, variety theater, or other place of questionable repute, or to any person connected with, or any inmate of, such house, theater, or other place, or who permits such minor to enter such house, theater, or other place, is guilty of a misdemeanor. [*Enacted March 22, 1905.*]

Children not to be sent to immoral places.

§ 273f. Any person, whether as parent, guardian, employer, or otherwise, and any firm or corporation, who as employer or otherwise, shall send, direct, or cause to be sent or directed to any saloon, gambling house, house of prostitution, or other immoral place, any minor under the age of eighteen, is guilty of a misdemeanor. [*Enacted March 18, 1907.*]

Immoral practices in presence of children.

§ 273g. Any person who in the presence of any child indulges in any degrading, lewd, immoral or vicious habits or practices, or who is habitually drunk in the presence of a child in his care, custody or control, is guilty of a misdemeanor. [*Enacted March 21, 1907.*]

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Person convicted may be sentenced to work on roads.

§ 273h. In all prosecutions under the provisions of either section 270 or section 270*a*, or section 270*b*, or section 271, or section 271*a* of this code where a conviction is had and sentence of imprisonment in the county jail is imposed, the court may direct that the person so convicted shall be compelled to work upon the public roads or highways, or any other public work, in the county where such conviction is had, during the term of such sentence. And it shall be the duty of the board of supervisors of the county where such conviction and sentence are had, and where such work is performed by a person under sentence to the county jail, to allow and order the payment out of any fund available to the wife, or to the guardian, or to the custodian of a child or children, or to an organization, or to an individual appointed by the court as trustee, at the end of each calendar month, for the support of such wife, child or children, a sum not to exceed one and 50/100 dollars for each day's work of such person. [*Enacted April 6, 1911.*]

ABORTIONS.

Administering drugs.

§ 274. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than five years.

Submitting to an attempt to produce miscarriage.

§ 275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

CHILD STEALING.

§ 278. Every person who maliciously, forcibly, or fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding twenty years. [*Amended March 11, 1901.*]

BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

Bigamy defined.

§ 281. Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

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Exceptions.

§ 282. The last section does not extend—

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years, without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

Punishment of bigamy.

§ 283. Bigamy is punishable by a fine not exceeding five thousand dollars and by imprisonment in the state prison not exceeding ten years. [*Amended March 18, 1905.*]

Marrying a husband or wife of another.

§ 284. Every person who knowingly and wilfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than five thousand dollars, or by imprisonment in the state prison not exceeding ten years. [*Amended March 18, 1905.*]

Incest.

§ 285. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison not exceeding ten years.

Crime against nature.

§ 286. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.

Penetration sufficient.

§ 287. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

Lewd conduct with child.

§ 288. Any person who shall wilfully and lewdly commit any lewd or lascivious act other than the acts constituting other crimes provided for in part two of this code upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the state prison not less than one year. [*Amended March 23, 1901.*]

Selling tobacco to minors.

§ 308. Every person, firm or corporation which sells or gives or in any way furnishes to another person who is in fact under the age of eighteen

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years any tobacco, cigarette or cigarette papers or any other preparation of tobacco is guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment for not more than sixty days; and for the second offense by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment for not more than ninety days; and for each subsequent offense by a fine of not less than one hundred dollars and not more than three hundred dollars, or by imprisonment for not less than ninety days nor more than six months, or by both such fine and imprisonment. Every person, firm or corporation which sells, or deals in tobacco or any preparation thereof shall, within ninety days after this act becomes effective, post conspicuously and keep so posted in his or their place of business a copy of this act, and any such person failing to do so shall upon conviction be punished by a fine of five dollars for the first offense, and twenty-five dollars for each succeeding violation of this provision, or by imprisonment for not more than thirty days. The secretary of state is hereby authorized to have printed sufficient copies of this act to enable him to furnish dealers in tobacco with copies thereof upon their request for the same. [*Amended March 24, 1911.*]

Admitting minor to house of prostitution.

§ 309. Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein, or any parent or guardian of any such minor who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house or room, shall be guilty of a misdemeanor. [*Enacted April 12, 1880.*]

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

Indecent exposures, exhibitions, and pictures.

§ 311. Every person who wilfully and lewdly, either:

1. Exposes his person or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to lewd or vicious thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares

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any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or,

5. Sings any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor. [*Amended March 30, 1874.*]

Seizure of indecent articles authorized.

§ 312. Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Determination of their character.

§ 313. The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure, is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the district attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies.

Their destruction.

§ 314. Upon the conviction of the accused, such district attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

Keeping or residing in house of ill fame.

§ 315. Every person who keeps a house of ill fame in this state, resorted to for the purposes of prostitution or lewdness, or who wilfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it. [*Amended March 21, 1905.*]

Keeping disorderly houses.

§ 316. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor. [*Amended March 30, 1874.*]

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Advertisement to produce miscarriage unlawful.

§ 317. Every person who wilfully writes, composes, or publishes any notice or advertisement of any medicine, or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony. [*Enacted March 30, 1874.*]

Prevailing upon any one to visit gambling house, etc.

§ 318. Whoever, through invitation or device, prevails upon any person to visit any room, building, or other place kept for the purpose of gambling, or prostitution, is guilty of a misdemeanor; and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars, or be punished by both such fine and imprisonment. [*Enacted April 16, 1880.*]

Allowing minors to gamble in saloons.

§ 336. Every owner or lessee, or keeper of any house used in whole, or in part, as a saloon or drinking place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor. [*Enacted March 24, 1874.*]

Hazing.

§ 367b. Whosoever being a student, or being a person in attendance at any public, private, parochial, or military school, college, or other educational institution, conspires to haze or engages in hazing or commits any act that injures, degrades or disgraces, or tends to injure, degrade, or disgrace any fellow student or person attending such institution shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than five hundred dollars, or imprisoned in the county jail not more than six months. or both. [*Enacted March 22, 1907.*]

Selling liquors to minor.

§ 397b. Every person who sells, gives or delivers to any minor child male or female, under the age of eighteen years, any intoxicating drink in any quantity whatsoever, or who, as proprietor or manager of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years, to visit said saloon or public house where intoxicating liquors are sold, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for a period not exceeding one hundred and fifty days, or by both such fine and imprisonment; *provided,* that this section shall not apply to the parents of such children, or to guardians of their wards. [*Enacted March 21, 1905.*]

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Purchasing junk from minor.

§ 501. Every person who purchases or receives in pledge, or by way of mortgage, from any person under the age of sixteen years, any junk, metal, mechanical tools, or implements, is guilty of a misdemeanor. [*Enacted March 28, 1872.*]

Marrying under false personation.

§ 528. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

Married person selling land under false representation.

§ 534. Every married person who falsely and fraudulently represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representations wilfully conveys or mortgages the same, is guilty of felony.

Requiring ward to work more than eight hours.

§ 651. Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinicultural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor.

Abuse of school-teachers.

§ 653b. Every parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor. [*Amended March 21, 1905.*]

Kidnaping.

§ 784. The jurisdiction of a criminal action:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnaping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this state, or to be sent out of the state, or from one county to another, or to be sold as a slave, or in any way held to service;

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child;

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution; or,

4. For taking away any female, under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her

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person, without their consent, either for the purpose of concubinage or prostitution;

Is in the county in which the offense is committed, or out of which the person upon whom the offense was committed has, in the commission of the offense, been taken, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein. [*Amended March 21, 1905.*]

Security for appearance of witnesses.

§ 879. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

For infants and married women.

§ 880. Infants and married women, who are material witnesses against the defendant, may be required to procure sureties for their appearance, as provided in the last section.

Proceedings when female is supposed to be pregnant.

§ 1225. If there is good reason to believe that a female against whom a judgment of death is rendered is pregnant, such proceedings must be had as are provided in section twelve hundred and twenty-one, except that instead of a jury, as therein provided, the court may summon three disinterested physicians, of good standing in their profession, to inquire into the supposed pregnancy, who shall, in the presence of the court, but with closed doors, if requested by the defendant, examine the defendant and hear any evidence that may be produced, and make a written finding and certificate of their conclusion, to be approved by the court and spread upon the minutes. The provisions of section twelve hundred and twenty-two apply to the proceedings upon such inquiry. [*Amended March 21, 1905.*]

If female is not pregnant.

§ 1226. If it is found that the female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant the warden must suspend the execution of the judgment, and transmit a certified copy of the finding and certificate to the governor. When the governor receives from the warden a certificate that the defendant is no longer pregnant, he must issue to the warden his warrant appointing a day for the execution of the judgment. [*Amended March 21, 1905.*]

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When husband and wife are competent witnesses.

§ 1322. Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both, or in case of criminal actions or proceedings for a crime committed by one against the person or property of the other, or in cases of criminal violence upon one by the other, or in cases of criminal actions or proceedings for bigamy, or adultery, or in cases of criminal actions or proceedings brought under the provisions of section two hundred and seventy and two hundred and seventy *a* of this code. [*Amended March 2, 1911.*]

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POLITICAL CODE.

General right of the state over persons.

§ 37. The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime;
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety;
3. To imprison or confine for the purpose of enforcing civil remedies;
4. To establish custody and restraint for the persons of idiots, lunatics, drunkards, and other persons of unsound mind;
5. To establish custody and restraint of paupers for the purpose of their maintenance;
6. To establish custody and restraint of minors unprovided for by natural guardians, for the purposes of their education, reformation and maintenance;
7. To require services of persons, with or without compensation: In military duty; in jury duty; as witnesses; as town or village officers; in highway labor; in maintaining the public peace; in enforcing the service of process; in protecting life and property from fire, pestilence, wreck and flood; and in such other cases as are provided by statute.

Qualifications of notaries public.

§ 792. Every person appointed as notary public must, at the time of appointment, be a citizen of the United States and of this state, and twenty-one years of age; must have resided in the county for which the appointment is made for six months. Women having these qualifications may be appointed. [*Amended March 10, 1891.*]

Qualifications of voters.

§ 1083. Every native citizen of the United States, every person who shall have acquired the right of citizenship under or by virtue of the treaty of Queretaro, and every naturalized citizen thereof or female person who has acquired citizenship by virtue of her marriage to a citizen, or by the naturalization of her husband, and every other person who has otherwise become a citizen of the United States who shall have acquired such citizenship ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county in which such citizen claims to be entitled to vote ninety days, and in the election precinct thirty days, and who has conformed to the law governing the registration of voters, shall be a qualified elector at any and all elections held within the county, city and county, city, town, or district within which such elector resides. [*Amended December 23, 1911.*]

NOTE—The Political Code was enacted March 12, 1872. Sections amended since that date are followed by date of amendment.

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Registry of marriages.

§ 3076. All persons who perform the marriage ceremony in this state shall within three days after the ceremony file with the county recorder a certificate of registry of the marriage performed by them in such form as may be prescribed by the state registrar which shall contain among other matters as near as can be ascertained, the place and date of marriage, sex, race, color, age, name and surname, birthplace, residence of the parties married, number of marriage and condition of each, whether single, widowed, or divorced, the occupation of the parties, maiden name of the female, if previously married, the names and birthplace of the parents of each and the maiden name of the mother of each. [*Amended March 18, 1905.*]

Registry of Births.

§ 3077. Physicians, midwives, nurses and other persons assisting at a birth shall return in writing within five days thereafter to the county recorder of the county where such birth takes place in such form as may be prescribed by the state registrar a certificate of registry of such birth which shall contain among other matters, the time and place of such birth, name, sex, race and color of the child, the name, residence, age, birthplace and occupation of the parents and the maiden name of the mother, and whether born in or out of wedlock, and such other information as may be required by the state registrar; *provided, however,* that in cities having a freeholders charter the health officer shall act as local registrar and perform all the duties thereof. In case the child is not named the recorder or registrar of such locality shall deliver to such parent, next of kin, physician, midwife or other person furnishing such certificate of birth a supplementary blank for report of given name, which shall be filled out and returned as soon as the child shall be named. In case there shall be no physician, midwife, or nurse attending at such birth, then, it shall be the duty of the parents of any child born in this state (and if there be no parent alive, then the next of kin of said child) within ten days after such birth to report in writing to the recorder of the county or health officer of cities having a freeholders charter where such birth takes place, in such form as may be prescribed by the state registrar, the date, place and residence, name, sex, race, and color of such child, and the names, residence, birthplace and age of the parents, their occupations, and the maiden name of the mother, and whether born in or out of wedlock, and such other information required by the state registrar. [*Amended March 18, 1905.*]

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EDUCATIONAL RIGHTS OF CHILDREN.

An act to enforce the educational rights of children and providing penalties for violation of the act.

[Approved March 24, 1903.]

Each child must attend school.

SECTION 1. Unless excused, as hereinafter provided, each parent, guardian, or other person, in the State of California, having control or charge of any child between the ages of eight and fifteen years, shall be required to send such child to a public school, during the time in which a public school shall be in session, in the city or city and county or school district in which said child resides; *provided,* that should it be shown to the satisfaction of the board of education of the city or city and county, or of the board of trustees of the school district, in which such child resides, that the child's bodily or mental condition is such as to prevent or render inadvisable attendance at school or application to study, a certificate from any reputable physician that the child is not able to attend school, or that in attendance is inadvisable, must be taken as satisfactory evidence by any such board, or that such child is being taught in a private school, or by a private tutor, or at home by any person capable of teaching, in such branches as are usually taught in the primary and grammar schools of this state; or that any such child between the age of twelve and fifteen has been given a permit to work by the proper judicial officers in accordance with section two of "An act regulating the employment and hours of labor of children, prohibiting the employment of minors under certain ages, prohibiting the employment of certain illiterate minors, providing for the enforcement hereof by the commissioner of the bureau of labor statistics and providing penalties for the violation hereof approved February 20, 1905"; or that no public school is located within two miles, by the nearest traveled road, of the residence of the child; or that the child has completed the prescribed grammar school course; then it shall be the duty of such board of education or board of trustees, upon application of the parent, or guardian, or other person having control or charge of such child, to excuse such child from attendance at school, during the continuance of such defect or condition upon which such excuse is granted; *and provided, further,* that circumstances rendering attendance impracticable or dangerous to health owing to unusual storm or other sufficient cause, shall work an exemption from the penalties of this act. If any parent or guardian or other person having control or charge of any such child presents proof to such board of education or board of trustees, by affidavit, that he is unable to compel such child to attend school, said parent, guardian or other person shall be exempt from the penalties of this act, as regards the subsequent non-attendance at school of such child, and said child may, in the discretion of such board, be deemed a truant and subject to assignment to the parental school. [*Amended April 21, 1911.*]

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Penalty for failure to send child to school.

SEC. 2. Any parent, guardian, or other person having control or charge of any such child, who shall fail to comply with the provisions of this act, shall, unless excused or exempted therefrom as hereinbefore provided, be deemed guilty of a misdemeanor, and upon conviction, shall be liable, for the first offense, to a fine of not more than ten dollars or to imprisonment for not more than five days, and for each subsequent offense he shall be liable to a fine of not less than ten nor more than fifty dollars, or to imprisonment for not less than five days nor more than twenty-five days, or to both such fine and imprisonment.

Investigation.

SEC. 3. The board of education of any city or city and county, or the board of trustees of any school district, shall, on the complaint of any person, make full and impartial investigation of all charges against parents or guardians or other persons having control or charge of any such child, for violation of any of the provisions of this act. If it shall appear upon such investigation that any such parent or guardian or other person has violated any of the provisions of this act, it is hereby made the duty of the secretary of such board of education, except as hereinafter provided, or the clerk of such board of trustees, to make and file in the proper court a criminal complaint against such parent, guardian or other person, charging such violation, and to see that such charge is prosecuted by the proper authorities; *provided,* that in cities, and in cities and counties, and in school districts having an attendance officer or officers, such officer or officers shall, under the direction of the board of education, or the city superintendent of schools, or the board of trustees, make and file such complaint, and see that such charge is prosecuted by the proper authorities. [*Amended March 4, 1907.*]

Attendance officer.

SEC. 4. The board of education of any city, or city and county, may appoint and remove at pleasure one or more attendance officers of such city, or city and county, or the board of trustees of any school district having at least six hundred census children, may appoint and remove at pleasure one attendance officer, and shall fix his or their compensation, not exceeding one thousand dollars per annum for any such officer, payable from the county or special school fund of such city, city and county, or school district, and shall prescribe their duties, not inconsistent with law, and make rules and regulations for the performance thereof; *provided,* that in any city, or city and county, containing less than twenty thousand school census children, not more than one attendance officer shall be appointed, and in any city, or city and county, containing more than twenty thousand school census children, not more than one attendance officer shall be appointed for each twenty thousand school census children, or fraction greater than one half thereof. [*Amended March 4, 1907.*]

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Commitment of truant children to parental school.

SEC. 5. It shall be the duty of the attendance officer, or of any peace officer or any school officer, to arrest during school hours, without warrant, any child between eight and fourteen years of age, found away from his home, and who has been reported to him by the teacher, the superintendent of schools, or other person connected with the school department or schools as a truant from instruction upon which he is lawfully required to attend within the county, city, or city and county, or school district. Such arresting officer shall forthwith deliver the child so arrested either to the parent, guardian or other person having control or charge of such child, or to the teacher from whom said child is then a truant, or if such child shall have been declared an habitual truant, he shall bring such child before a magistrate for commitment by him to a parental school, as provided in this act. The attendance officer or other arresting officer shall report promptly such arrest, and the disposition made by him of such child to the school authorities of such city, or city and county, or school district. Any child may be reported as a truant, in the meaning of this act, who shall have been absent from school without valid excuse more than three days or tardy on more than three days, any absence for a part of a day being regarded as a tardiness. Any child who has once been reported as a truant and who is again absent from school, without valid excuse, one or more days, or tardy on one or more days, may again be reported as a truant. Any child may be deemed an habitual truant who shall have been reported as a truant three or more times. Any child who has once been declared an habitual truant and who, in a succeeding year, is reported as a truant from school one or more days or tardy on one or more days without valid excuse, may be again declared an habitual truant. [*Amended March 4, 1907.*]

Establishment of parental schools.

SEC. 6. The board of education of any city, or of any city and county, or the board of trustees of any school district having at least six hundred census children, may establish schools in a manner hereinafter prescribed, or set apart in public school buildings for children between eight and fourteen years of age, who are habitual truants from instruction upon which they are lawfully required to attend, or who are insubordinate or disorderly during their attendance upon such instruction, or irregular in such attendance. Such school or room shall be known as a parental school. A parental school, as herein designated and provided for, shall be one of the primary or grammar schools of the city, or city and county, or school district, and the teachers therein shall have the same qualifications and be employed and paid in the same manner as in other primary and grammar schools; but such parental school shall be established and maintained specially for the instruction therein of such pupils, between the ages of eight and fourteen years, as shall be committed thereto as provided in this act, and no pupil shall be committed to, or required to attend, such school, except as in this act provided. Said board of education or board of trustees may make such special rules and regulations for the government of a parental

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school as shall be consistent with the provisions and purposes of this act, and not contrary to law. Such board may provide for the detention, maintenance and instruction of such children in such schools; and the county superintendent of schools, or such board, or the city superintendent of schools in any city, or city and county, or board of trustees, may, after reasonable notice to any such child, and an opportunity for the child to be heard, and with the consent of the parent, guardian or other person having control or charge of such child, order such child to attend such school, or to be detained and maintained therein for such period and under such rules and regulations as such board may prescribe, not exceeding the remainder of the school year. If such parent, guardian, or person having control or charge of such child shall not consent to such order, such child may be proceeded against under this act. If any child in any city, or city and county or school district in which a parental school shall be established, shall be an habitual truant, or be irregular in attendance at school, within the meaning of these terms, as defined in this act, or shall be insubordinate or disorderly during attendance at school, it shall be the duty of the attendance officer, or of the secretary of the board of education or clerk of the board of trustees if there be no attendance officer, to make and file a complaint against such child, in the proper court, charging the fact, and to see that such charge is prosecuted by the proper authority; and if the court, upon the hearing of such complaint, shall find that such charge is sustained, the court shall render judgment that such child be committed to, and be detained and maintained in, a parental school in such city, or city and county, or school district for a term not to exceed the remainder of the current school year; *provided*, that, if any child in any district of a county where there is not a parental school shall be an habitual truant, or be irregular in attendance at school, within the meaning of those terms as defined in this act, or shall be insubordinate or disorderly during attendance at school, it shall be the duty of the county superintendent of schools to make and file a complaint against such child, in the superior court of such county, charging the facts; and if the court, upon the hearing of said complaint, shall find that such charge is sustained by the evidence, the court shall render judgment that such child shall be detained and maintained in a parental school, if there be one in such county, during the remainder of the school term, and if there be no parental school in such county, the court shall render judgment that the parent, guardian or person having the control or charge of such child shall deliver such child at the beginning of each school day for the remainder of the school term, at the school from which such child is then a truant; *provided*, that if the parent, guardian, or other person having control or charge of such child shall, within three days after the rendition of such judgment, execute a good and sufficient bond to the board of education of the city, or city and county, or board of trustees of the district, with sufficient sureties, in the sum of two hundred dollars, conditioned that such child will, during the remainder of such current school year, regularly attend some public or private school in such city, or city and county, or school district and not be insubordinate or disorderly during such attendance, such bond to be approved by the judge of said court, and be

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filed with the secretary of the board of education or clerk of the board of trustees, then such court shall make an order suspending the execution of such judgment so long as the condition of such bond shall be complied with. If the condition of such bond be violated, such court, upon receiving satisfactory evidence of the fact in any action brought therefor shall make an order declaring such bond forfeited and directing such judgment to be thenceforth enforced. Such board of education or board of trustees may, at any time within one year after any such bond shall be declared forfeited, have execution issued against any or all of the parties to such bond, to collect the amount thereof; and all moneys paid or collected on such bond shall be paid over to the parental school fund of such city, or city and county, or school district. No fees shall be charged or received by any court or officer in any proceeding under this section. The confinement of any child in a parental school shall be conducted with a view to the improvement of the child and to its restoration, as soon as practicable, to the school which he would, if not so confined, be required to attend. The city superintendent of schools, or, if there be no city superintendent, the board of education of any city, or city and county, or county superintendent of schools, shall have authority, in their discretion, to parole at any time any child committed to, or ordered to attend, a parental school, except when such commitment shall be by judgment or order of a court; and when such commitment of any child shall be made by judgment or order of a court, such court may, on the recommendation of the city superintendent of schools, of the board of education or county superintendent of schools, make an order paroling such child, upon such terms and conditions as shall be specified in the order. The expense incurred by any city, or city and county, or school district in purchasing or renting a school site, erecting or renting a building and equipping the same, for the maintenance of a parental school, shall be paid out of funds other than those collected for the maintenance of schools. The salaries of teachers and the expense for all school supplies in a parental school shall be paid out of the same funds from which similar salaries and expense are paid for primary and grammar schools, but all other expense incurred in the maintenance of such parental schools shall be paid out of the parental school fund. [*Amended March 4, 1907.*]

Method of procedure for establishing parental schools.

SEC. 7. Whenever any board of education shall determine that it is necessary or expedient for the city or city and county to establish and maintain a parental school, said board shall furnish to the city council, or other governing body of such city, or city and county, all necessary and required information and statistics, and if, after consideration, such city council or other governing body grants its consent for the establishment of such parental school, then the board of education shall furnish to the authorities whose duty it is to levy taxes in such city, or city and county, thirty days before the time specified by law for fixing the annual tax rate, an estimate of the cost of purchasing or renting a suitable site, and also an estimate of the cost of renting or erecting a suitable building and equip-

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ping the same for occupancy as a parental school, and the cost to the city or city and county, other than for salaries of teachers and for school supplies, of conducting the school for the remainder of the current school year. When, pursuant to such consent by such governing body, such estimates shall have been so made and furnished by the board of education of any city, or city and county, it is hereby made the duty of the authorities whose duty it shall be to levy taxes in such city, or city and county, at the time of levying the taxes, to levy a special tax upon all taxable property of said city, or city and county, sufficient in its judgment to provide the facilities requested by the board of education, and for which such estimates shall have been so furnished. It shall be the duty of the board of education, yearly, thereafter, to present to the authorities of the city, or city and county, whose duty it is to levy taxes, on or before the first Monday in July, an estimate of the moneys required for conducting the parental school for the school year, other than for the salaries of teachers and for school supplies. When such estimate shall have been so presented, it shall be the duty of the said authorities to levy a special tax upon the taxable property of said city, or city and county, sufficient to maintain such school for the year, exclusive of salaries of teachers and expense of school supplies. All taxes in this act provided for shall be computed, entered upon the tax roll and collected, in the same manner as other taxes are computed, entered and collected, and when collected shall be placed in a separate fund, to be known as the "parental school fund," and shall be paid out on the order of the board of education for the purposes set forth in this act; *provided*, that all moneys so collected for the purchase of sites or buildings, or the erection or equipment of buildings for parental school purposes, shall be placed in a separate fund, to be known as the "parental school building fund," and shall be used solely for the purpose or purposes for which collected, except that after such purpose or purposes shall have been fully accomplished, the residue of such fund, if any, may be transferred to said parental school fund.

Any district may establish.

SEC. 7½. The board of trustees of any school district wherein a parental school may be established under the provisions of this act, and whenever such board deems it proper, may, for the purpose of raising money for the establishment and maintenance of a parental school for said district, proceed under the provisions of article XIX, chapter III, title III, of part III, of the Political Code of this state, to raise moneys for such purpose, and the moneys so raised shall be paid into the county treasury, and shall constitute a "parental school fund," for such district. The moneys of such fund shall be used for no other purpose than herein indicated. Money shall be drawn from said fund by the trustees of the district in the same manner as money is drawn from other school funds. [*Enacted March 4, 1907.*]

Joint parental schools.

SEC. 8. Two or more school districts or cities may unite in the following manner, to form a joint district for the maintenance of a joint parental

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school. When any board of education or board of school trustees has secured, in the manner as set forth in section 7 of this act, the consent of the legislative body of the city or school district, in which said board of education or board of school trustees holds office, for the union of two or more districts to form a joint parental school district, said board of education or board of trustees shall transmit such information to the board of supervisors of the county of which said city or school district or districts forms a part, setting forth at the same time the cities or districts with which said city or district seeks to unite for the maintenance of a joint parental school. When such information has been received by the board of supervisors from all the cities or school districts seeking to be united, it is hereby made the duty of the board of supervisors, by resolution, to declare such cities or school districts united for the maintenance of a joint parental school, to be known as the joint parental school district of (give the names of the school districts uniting). When the districts have been so united, the boards of education or boards of trustees of the cities or school districts so uniting shall appoint a board of trustees for the joint parental school district, to consist of five members, (unless the number of cities or school districts uniting exceeds five), who shall be appointed from the membership of the board of the several districts or cities uniting, by the respective boards in approximate proportion to the census children between five and seventeen years of age, in the districts uniting; *provided, however,* that each district shall be represented by at least one member on the board of trustees of the joint parental school district. The members so appointed, to serve for the remainder of the term of office for which they were elected on their respective boards of education or boards of trustees, and when vacancies occur on said board of trustees of joint parental school districts, they shall be filled by the board making the original appointment. The superintendent of schools of each of the cities or school districts uniting, shall be ex officio members of the board of trustees of the joint parental school district, without the right to vote. In the management of a parental school within a school district, city, or city and county, the right to transport pupils to and from school at public expense, when, in the judgment of the board of education, or board of school trustees, the interest of the pupil demands it, is hereby conferred upon such boards. All the powers and duties by any section of this act conferred or imposed upon the boards of school trustees or boards of education of any city, or city and county, in the management of, and the securing of, funds for a parental school within a city or school district, are hereby conferred upon and imposed upon the board of trustees of any joint parental school district in the management of and the securing of funds for the support of a joint parental school; *provided, however,* that in estimating the expense of maintenance of a joint parental school the amount of money needed for the payment of teachers' salaries and for the furnishing of school supplies, shall be included in the estimate of expenses; *and provided, further,* that the estimates shall be transmitted to the board of supervisors of the county of which the joint parental school district forms a part. When such estimates shall have been so transmitted, it is hereby made the duty of the board of supervisors to

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levy a special tax upon the taxable property within the boundaries of the joint parental school district, sufficient to provide the facilities requested by the board of trustees of the joint parental school district, and for which such estimates shall have been furnished, and yearly thereafter when the estimates of the total expense of the maintenance of the joint parental school and increased facilities shall have been furnished the board of supervisors, it shall be the duty of said board to levy a special tax sufficient to maintain the school for the year. All taxes in this act provided shall be computed and entered upon the tax roll and collected in the manner prescribed for the collection of taxes in section 7 of this act; *provided*, that all moneys so collected shall be collected by the county tax collector and apportioned to the credit of the joint parental school district, and placed in the fund for which they were specially collected. If for sites or buildings, to be placed in a fund known as the joint parental school building fund, to be used exclusively for the purposes for which they were collected, the same as set forth in section 7 of this act. The board of trustees of joint parental school districts shall organize, by the election of one of their number as chairman, and by the election of a secretary who shall be the city superintendent of schools, or the secretary of a board of education or the clerk of one of the boards of education or boards of trustees of the cities, or school districts united, and such secretary shall serve without additional salary. All moneys in a joint parental school fund shall be paid out on the order of the board of trustees of the joint parental school district for the purposes herein set forth, and in the same manner that funds are paid from the ordinary school funds of a school district.

Fines paid to parental school fund.

SEC. 9. All fines paid as penalties for the violation of any of the provisions of this act shall, when collected or received, be paid over by the justice or officer receiving the same to the treasurer of the city, or city and county, in which the offense was committed, to be placed to the credit of the parental school fund of such city, or city and county, if there be such a fund, otherwise to the credit of the general school fund of such city, or city and county, or to the county treasurer, to be placed to the credit of the school fund of the school district in which the offense was committed.

Deaf or blind children must be sent to school.

SEC. 10. Any parent or guardian of any deaf, dumb, or blind child, legally entitled to admission to said institution, shall send such child to said institution until such child shall have been therein for five years, or shall have reached the age of majority, unless such child shall be excused from such attendance by the board of education or board of trustees of the city, city and county, or school district in which such child resides, for the reason that the child's bodily or mental condition is such as to prevent or render inadvisable attendance at said institution, or for the reason that such child is receiving proper instruction at home or in some public or private school. Any parent or guardian failing to comply with the require-

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ments of this section shall be guilty of a misdemeanor, and be punishable as provided in section two of this act.

Officers having jurisdiction.

SEC. 11. Any justice of the peace, or recorder of the city or city and county or any justice of the peace of the township in which the school district is located, or in which the offense is committed, shall have jurisdiction of all offenses committed under the provisions of this act.

SEC. 12. This act shall take effect and be in force from and after July first, nineteen hundred and three.

SEC. 13. An act entitled an act to enforce the educational rights of children, approved March twenty-eighth, eighteen hundred and seventy-four, and all acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

An act to aid the enforcement of an act entitled, "An act to enforce the educational rights of children and providing penalties for violations of the act," approved March 24, 1903.

[Approved March 8, 1909.]

SECTION 1. All minors coming within the provisions of an act entitled, "An act regulating the employment and hours of labor of children, prohibiting the employment of minors under certain ages, prohibiting the employment of certain illiterate minors, providing for the enforcement hereof by the commissioner of the bureau of labor statistics and providing penalties for the violation hereof," (approved February 20, 1905) and found employed and at work without the necessary legal authorization as provided for and required in said act, and whose ages are between the maximum and minimum age limits as described in an act entitled, "An act to enforce the educational rights of children and providing penalties for violation of the act," shall be placed or delivered into the custody of the school district authorities of the county, city, or city and county in which they are found illegally at work.

SEC. 2. The commissioner of the bureau of labor statistics is hereby authorized, directed and empowered to enforce the provisions of this act.

SEC. 3. This act shall take effect immediately.

GUARDIANSHIP OF ORPHANS.

An act to provide for the appointment of guardians of children maintained in any orphans' home or orphan asylum in this state.

[Approved March 23, 1893.]

SECTION 1. When any orphan or half orphan has been maintained in any orphans' asylum or orphans' home in the State of California for more than one year, the managers of said home or asylum shall be entitled to the guardianship of such child in preference to any other person; ***provided, however,*** that such managers shall not be appointed guardian of a minor child over fourteen years of age without its consent, nor shall this act

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preclude the court of competent jurisdiction from inquiring into the fitness of such managers for the guardianship of such children; but in exercising the power of the court to appoint guardians for minors, the managers of the home having the care of such child for more than one year shall, if there be no special reasons to the contrary in any particular case, be preferred in the guardianship of the person of the child to the parent so leaving the child, without good cause therefor being shown, under the care of said home for the said time.

SEC. 2. This act shall take effect immediately.

CONTROL OF CHILDREN'S HOME FINDING SOCIETIES.

An act providing for the supervision and control by the state board of charities and corrections of the placing of dependent children into homes and for the supervision of all societies or organizations engaged in such work and known as children's home finding societies.

[Approved April 24, 1911.]

SECTION 1. It shall hereafter be unlawful for any organization, society or persons to engage in the work of placing dependent children into homes in this state without first obtaining a permit therefor, duly executed in writing, from the state board of charities and corrections.

SEC. 2. The said state board of charities and corrections may investigate, or cause to be investigated, the books, records, and methods of such organizations, societies, or persons, and the disposition of the children coming into their custody; and it may make such rules and regulations as it may deem best for the government and regulation of such societies or persons, and may require such reports as it may desire.

SEC. 3. The said state board of charities and corrections is hereby authorized and empowered to withdraw and cancel any permit to engage in the work of placing children into homes for any failure to observe the rules and regulations established for their government, or the failure to report as required, or for any failure on their part to perform their work as required by the best interests of the state, but no permit shall be canceled or withdrawn without due notice and hearing.

SEC. 4. It is hereby made a misdemeanor for any person or persons, either as individuals or officers of any association or society, to engage in the work of placing children into homes, or the soliciting of funds therefor, in this state without a permit duly executed in writing by the state board of charities and corrections, authorizing said persons or such association or society to engage therein, or to engage in such work after any permit has been canceled.

SEC. 5. This act shall not be construed as applying to any regularly established orphan home or any officer or official thereof acting for or on behalf of such home receiving aid from the state for the care of orphans, half orphans or abandoned children in any effort such institution or its officers may make to procure the adoption into homes or any officer or official thereof acting for or on behalf of such home of any such children.

SEC. 6. This act shall take effect immediately.

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MINORS NOT TO ATTEND PRIZE FIGHTS.

An act to prevent any minor under the age of eighteen years visiting any prize fight, cock fight, or place where any prize fight or cock fight is advertised or represented to take place and to provide a punishment therefor.

[Approved April 17, 1909.]

SECTION 1. It shall be unlawful for any minor under the age of sixteen years to visit or attend any prize fight, cock fight, or place where any prize fight, cock fight, or place where any prize fight or cock fight is advertised to take place.

SEC. 2. It shall be unlawful for the owner, lessee or proprietor, or the agent of any owner, lessee or proprietor of any place where any prize fight or cock fight is advertised or represented to take place to admit any minor under the age of eighteen years to such place where any prize fight or cock fight is advertised or represented to take place; or to admit, or to sell or give away to any such minor a ticket or other paper by which said minor might be admitted to such place where such prize fight or cock fight is advertised to take place.

SEC. 3. Every person violating any of the provisions of the preceding sections is guilty of a misdemeanor, and shall be punished by a fine of not exceeding fifty dollars, or be imprisoned in county jail not more than twenty-five days.

PROHIBITING MINORS FROM ENGAGING IN BUSINESS.

An act to prohibit minors under the age of eighteen years to vend and sell goods, engage in, or conduct any business between the hours of ten o'clock in the evening and five o'clock in the morning, and providing penalties for violations thereof.

[Approved May 1, 1911.]

SECTION 1. It shall be unlawful for any minor under the age of eighteen years to vend and sell goods, engage in, or conduct any business between the hours of ten o'clock in the evening and five o'clock in the morning.

SEC. 2. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than twenty dollars, or by imprisonment for not more than ten days, or by both such fine and imprisonment for each offense.

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HOURS OF LABOR OF CHILDREN.

An act to amend "An act regulating the employment and hours of labor of children, prohibiting the employment of minors under certain ages, prohibiting the employment of certain illiterate minors, providing for the enforcement hereof by the commissioner of the bureau of labor statistics, and providing penalties for the violation hereof," approved February 20, 1905.

[Approved April 14, 1911.]

"An act regulating the employment and hours of labor of children, prohibiting the employment of minors under certain ages, prohibiting the employment of certain illiterate minors, providing for the enforcement hereof by the commissioner of the bureau of labor statistics, and providing penalties for the violation hereof," approved February 20, 1905, is hereby amended to read as follows:

Minors not to work more than nine hours a day.

Section 1. No minor under the age of eighteen shall be employed in laboring in any manufacturing, mechanical, or mercantile establishment, or other place of labor, more than nine hours in one day, except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week, and in no case shall the hours of labor exceed fifty-four hours in a week.

Not to work between 10 p. m. and 5 a. m.

SEC. 2. No minor under the age of eighteen years shall be employed or permitted to work between the hours of ten o'clock in the evening and five o'clock in the morning. No child under fifteen years of age shall be employed in any mercantile institution, office, laundry, manufacturing establishment, workshop, place of amusement, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages; *provided,* that the judge of the juvenile court of the county, or city and county, or in any county or city and county in which there is no juvenile court, then any judge of the superior court of the county or city and county in which such child resides shall have authority to issue a permit to work to any such child over the age of twelve years, upon a sworn statement being made to him by the parent of such child that such child is past the age of twelve years, that the parents or parent of such child are incapacitated for labor, through illness, and after investigation by a probation officer or attendance officer of the city, or city and county, in which such child resides, or in cities and counties where there are no probation or attendance officers, then by such other competent person as the judge may designate for this purpose. The permit so issued shall specify the kind of labor and the time for which it is issued, and shall in no case be issued for a longer period than shall seem necessary to the judge issu-

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ing such permit. Such permit shall be kept on file by the person, firm or corporation employing the child therein designated, during the term of said employment, and shall be given up to such child upon his quitting such employment. Such certificate shall be always open to the inspection of the attendance and probation officers of the city and county, city or county, in which the place of employment is situated, or of the officers of the state bureau of labor statistics; *and provided*, that the attendance officer of any county, city and county, or school district in which any place of employment, in this section named, is situated, shall have the right and authority, at all times to enter into any such place of employment for the purpose of investigating violations of the provisions of this act, or violations of the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, and amended March 20, 1905; *provided, however*, that if such attendance or probation officer is denied entrance to such place of employment, any magistrate may, upon the filing of an affidavit by such attendance or probation officer setting forth the fact that he had a good cause to believe that the provisions of this act, or the act hereinbefore referred to, are being violated in such place of employment, issue an order directing such attendance or probation officer to enter said place of employment for the purpose of making such investigations; *and provided*, that any such child over the age of twelve years may be employed at any of the occupations mentioned in this act during the regular vacation of the public schools of the city, county, or city and county, in which the place of employment is situated, upon the production of a permit signed by the principal, vice-principal of the school, or secretary of the board of school trustees or board of education of the school which such child has attended during the term next preceding any such vacation. Such permit shall contain the name and age of the child to whom it is issued, and the date of the termination of the vacation for which it is issued, and shall be kept on file by the employer during the period of employment, and at the termination of such employment shall be returned to the child to whom it was issued. No minor who is under sixteen years of age shall be employed or permitted to work at any gainful occupation during the hours that the public schools of the city, town or school district in which his place of employment is situated are in session, unless he or she can read English at sight and can write legibly and correctly simple English sentences, or unless he or she is a regular attendant for the then current term at a regularly conducted night school. A certificate of the principal of such school shall be held to be sufficient evidence of such attendance.

Hours of work to be posted.

SEC. 3. Every person, firm or corporation employing minors under eighteen years of age, in any manufacturing establishment, shall post and keep posted, in a conspicuous place in every room where such help is employed, a written or printed notice stating the number of hours per day for each day of the week required of such persons. Every person, firm, or corporation, agent or officer of a firm or corporation, employing or

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permitting minors under sixteen and over fifteen years of age to work in any mercantile institution, office, laundry, manufacturing establishment, workshop, place of amusement, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages, shall keep a record of the names, ages, and places of residence of such minors, and shall have on file a certificate of age and schooling, as provided in this act, for every such minor so employed, said record and certificate to be open at all times to the inspection of the school attendance and probation officers of the city and county, city or county, in which the place of employment is situated, or of the officers of the state bureau of labor statistics. An age and schooling certificate shall be approved only by the superintendent of schools of the city or city and county, or by a person authorized by him in writing, or where there is no city or city and county superintendent of schools, by a person authorized by the local school trustees; *provided,* that the superintendent or principal of any school of recognized standing shall have the right to approve an age and schooling certificate, and shall have the same rights and powers as the superintendent of public schools to issue the certificate herein provided, for children attending such schools. The persons authorized to issue age and schooling certificates shall have the authority to administer the oaths necessary for carrying out the provisions of this act, but no fees shall be charged for issuing such certificates. An age and schooling certificate shall not be approved unless satisfactory evidence is furnished by the last school census, the certificate of birth or baptism of such child, the public register of birth of such child, or in some other manner, that such child is of the age stated in such certificate. A duplicate copy of each age and schooling certificate granted under the provisions of this act shall be kept by the person issuing such certificate, such copy to be filed with the county superintendent of schools in the county where the certificate is issued; *provided,* that all such copies of certificates issued between June 25th and December 25th of any year shall be filed not later than December 31st of such year; and those issued between December 25th and June 25th of the ensuing year shall be filed not later than June 30th of each year. Such certificates shall be substantially in the following form, to wit:

Age and schooling certificate.—This certifies that I am the (father, mother, or guardian) of (name of the child), and that (he or she) was born at (name of town or city), in the county of (name of county) (if known), and state (or country) of (name), on the (day and year of birth), and is now (number of years and of months) old.

Signature as provided in this act.

Town or city, and date.

There personally appeared before me the above named (name of person signing) and made oath that the following certificate by (him or her) signed is true to the best of (his or her) knowledge and belief.

I hereby approve the foregoing certificate of (name of child), height (feet and inches), complexion (fair or dark), hair (color), having no sufficient reason to doubt that (he or she) is of the age therein certified, and I hereby certify that (he or she) (can or can not) read English at

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sight, and (can or can not) write legibly simple sentences in the English language. There is hereto attached a written request from the prospective employer of such child, that an age and schooling certificate be granted to such child.

Signature of the person authorized to sign, with his official character and authority.

Town or city and date.

This certificate belongs to the person in whose behalf it is drawn, and it shall be presented to (him or her) whenever (he or she) leaves the services of the person, firm, or corporation holding the same.

The certificate as to the birthplace and age of the minor under sixteen and over fifteen years of age shall be signed by his father, his mother, or his guardian; if a child has no father, mother, or guardian living in the same city or town, his own signature to the certificate may be accepted by the person authorized to approve the same. Every person authorized to sign the certificate prescribed by this act, who knowingly certifies to any false statement therein, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifty dollars, or imprisonment not more than thirty days, or by both such fine and imprisonment. The county superintendent of schools of each county shall file with the commissioner of the bureau of labor statistics a report showing the number of age and schooling certificates issued to male and female minors, fifteen years of age, and such other detailed information as the commissioner may require. Said report to be filed during the months of January and July of each year for the preceding six months, ending June 25th and December 25th of each year, and cover certificates issued during said periods and on file in the office of the county superintendent of schools as described in paragraph five of this section.

Not to remain idle longer than two weeks.

SEC. 3*a*. Provided, however, that no child having a permit to work, as prescribed in section 2 of this act, and no child having an age and schooling certificate, as described in section 3 of this act, and no other child, between the ages of fifteen and sixteen years, who, if between the ages of eight and fifteen years, would by law be required to attend school, shall, while the public schools are in session, be and remain idle and unemployed for a period longer than two weeks, but must enroll and attend school; *provided,* that within one week after any child having such a permit to work or such age and schooling certificate shall have ceased to be employed by any employer, such employer shall, in writing, giving the latest correct address of such child known to such employer, notify, in the case of a child having a permit to work, the judge of the juvenile court in the county of said child's residence, or the probation officer of such juvenile court, or in the case of a child having an age and schooling certificate, the county superintendent of schools of such county, that such child is no longer employed by such employer; and such judge of the juvenile court, or such probation officer, or such county superintendent of schools, shall thereupon immediately notify the attendance officer having

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jurisdiction in the place of such child's residence, giving the said latest correct address of such child, that such child is neither at work nor in school; *and provided, further,* that no such child shall be permitted to cease school attendance, without securing a permit to work, or an age and schooling certificate as provided in this act.

Failure to comply with act.

SEC. 4. Any person, firm, corporation, agent, or officer of a firm or corporation that violates or omits to comply with any of the foregoing provisions of this act, or that employs or suffers or permits any minor to be employed in violation thereof, is guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars or more than two hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment, for each and every offense. A failure to produce any age and schooling certificate or permit or to post any notice required by this act, shall be prima facie evidence of the illegal employment of any person whose age and schooling certificate or permit is not produced, or whose name is not so posted. Any fine collected under the provisions of this act shall be paid into the school funds of the county, or city, or city and county in which the offense occurred. Except such fines imposed and collected as the result of prosecutions by the officers of the bureau of labor statistics. In such cases one half of the resultant fine or fines shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics, and one half paid into the school funds of the county, or city, or city and county in which the offense occurred.

Employment while school is not in session.

SEC. 5. Nothing in this act shall be construed to prohibit the employment of minors at agricultural, horticultural, or viticultural or domestic labor during the time the public schools are not in session, or during other than school hours. Nor shall anything in this act be construed to prohibit any child between the ages of fifteen and eighteen years, who is by any statute or statutes of the State of California, now or hereafter in force, permitted to be employed as an actor, or actress, or performer, in a theatre, or other place of amusement, previous to the hour of ten o'clock p. m., in the presentation of a performance, play or drama, continuing from an earlier hour till after the hour of ten o'clock p. m., from performing his or her part in such presentation as such employee between the hours of ten and twelve o'clock p. m.

SEC. 6. It shall be the duty of the bureau of labor statistics to enforce the provisions of this act. The commissioner, his deputies, and agents, shall have all powers and authority of sheriffs to make arrests for violations of the provisions of this act.

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HOURS OF LABOR OF FEMALES.

An act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of any such employer to violate the provisions of this act.

[Approved March 22, 1911.]

SECTION 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; *provided, however,* that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable.

SEC. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

SEC. 3. Any employer who shall require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than fifty dollars nor more than two hundred dollars, or imprisoned in the county jail not less than five nor more than thirty days, or both fined and imprisoned.

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BANK DEPOSITS OF MARRIED WOMEN AND MINORS.

An act to define and regulate the business of banking.

SECTION 16. When any deposit with a bank shall be made by or in the name of any married woman or minor, the same shall be held for the exclusive right and benefit of such depositor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the dividends, if any, and interest, if any, thereon to the person in whose name deposits shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the bank. When any deposit with a bank shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest, if any, thereon, may be paid to the person for whom the deposit was made. When a deposit with a bank shall be made by any person in the names of such depositor and another person or persons, and in form to be paid to either or the survivor or survivors of them, such deposit thereupon, and any additions thereto made by either of such persons upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the lifetime of all or any or to the survivor or survivors after the death of one or more of them, and such payments and the receipt or acquittance of the one to whom such payment is made shall be valid and sufficient release and discharge to said bank for all payments made on account of such deposit. The surviving husband or wife of any deceased person, or, if no husband or wife is living, then the children of said decedent, or, if no children are living, then the father or mother of such decedent, and if neither the father or mother is living, then the brothers and sisters of such decedent, may, without procuring letters of administration, collect of any bank any sum which said deceased may have left on deposit in such bank at the time of his or her death; *provided,* such deposit shall not exceed the sum of five hundred dollars. Any bank, upon receiving an affidavit stating that said depositor is dead, and that affiant is the surviving husband or wife, as the case may be, or stating that decedent left no husband or wife, and that affiant is, or affiants are, the children, or stating that decedent left neither husband, wife or children, and that affiant is the father or mother, as the case may be, of said decedent, or stating that the decedent left neither husband, wife, children, father or mother, and that affiants are the brothers and sisters, as the case may be, and that the whole amount that decedent left on deposit in any and all banks of deposit in this state, does not exceed the sum of five hundred dollars, may pay to said affiant or affiants, any deposit of said decedent, if the same does not exceed the sum of five hundred dollars and the receipt of such affiant is sufficient acquittance therefor. [*Amended April 21, 1911.*]

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MATERNITY HOSPITALS.

An act to provide for the licensing and inspecting of maternity hospitals, lying-in asylums and homes for children; defining the duties of persons conducting the same; and the duties and powers of the county boards of health or county health officers and other health officers in relation thereto, and providing a penalty for the violation of its provisions.

[Approved March 20, 1903.]

SECTION 1. Any person who, without first having obtained a license in writing so to do from the county board of health or county health officers, as hereinafter provided, manages, conducts, establishes or maintains within any county or city and county in this state any maternity hospital or lying-in asylum where females may be received, cared for or treated during pregnancy, or during or after delivery; or manages, conducts, establishes or maintains within any county or city and county in this state any institution, boarding house, home or other place for the reception or care of children, or keeps, at any such place, any child under the age of twelve years, not his relative, apprentice, or ward, without legal commitment; or neglects, refuses or omits to comply with the provisions of this act, or who violates the provisions of such act, is guilty of a misdemeanor.

SEC. 2. For such places within the limits of their respective territorial jurisdictions, the county board of health in all counties or city and county governments, having a county board of health, and in all other counties or city and county governments, the county health officer shall have power to issue licenses and every such license must specify the name and residence of the person so undertaking the care of such females or children; and the location within the county or city and county of the place where the same are kept and the number of females or children thereby allowed to be received, boarded or kept therein, and shall be revocable for cause by the said county board of health or county health officer, as the case may be, in any case where the provisions of this act are violated, or in any case where, in the opinion of such county board of health or such county health officer, such hospital, asylum, institution, home, boarding house or other place is being managed, conducted or maintained without proper regard for the health, comfort or morality of the inmates thereof, or without due regard or proper sanitation or hygiene.

SEC. 3. Every person so licensed must keep a register, wherein he shall enter the names and addresses of all such females, the names and ages of all such children, and of all children born on the premises, and the names and residences of their parents, so far as is known, and the time of the reception and discharge of such children and the reasons therefor, and also the name and age of every child who is given out, adopted, taken away, or indentured from such place, to or by any person, together with the name and residence of the person so adopting, taking away or indenturing such child; and within forty-eight hours after such child is so given out, taken away or indentured, shall cause a correct copy of the register

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relating to such child to be sent to the county board of health or county health officer, as the case may be.

SEC. 4. It shall be lawful for the officers and representatives of such county board of health, or for such county health officers and their representatives, and for all health officers, at all reasonable times, to enter and inspect the premises wherein such females and children are so boarded, received or kept, and to call for and inspect the license and the register and also to see and visit such children and females.

PREVENTION OF BLINDNESS IN INFANTS.

An act to reguate medical practice to prevent blindness in infants.

[Approved February 17, 1897.]

SECTION 1. Should one or both eyes of an infant become reddened or inflamed at any time within two weeks after birth, it shall be the duty of the midwife, nurse, or person having charge of said infant, to report the condition of the eyes at once to some legally qualified practitioner of medicine of the city, town, or district in which the parents of the infant reside.

SEC. 2. Any failure to comply with the provisions of this act shall be punishable by a fine not to exceed one hundred dollars, or imprisonment not to exceed six months, or both.

SEC. 3. This act shall take effect from and after its passage.

JUVENILE COURT LAW.

An act to amend an act entitled "An act concerning dependent and delinquent minor children, providing for their care, custody and maintenance until twenty-one years of age; providing for their commitment to the Whittier State School and the Preston State School of Industry, and the manner of such commitment and release therefrom, establishing a probation committee and probation officers to deal with such children, and fixing the salaries of probation officers; providing for detention homes for said children; providing for the punishment of persons responsible for, or contributing to, the dependency or delinquency of children; and giving to the superior court jurisdiction of such offenses, and repealing inconsistent acts," approved March 8, ~~1899~~ 1909

[Approved April 5, 1911.]

SECTION 1. An act entitled, "An act concerning dependent and delinquent minor children, providing for their care, custody and maintenance until twenty-one years of age; providing for their commitment to the Whittier State School and the Preston State School of Industry, and the manner of such commitment and release therefrom, establishing a probation committee and probation officers to deal with such children, and fixing the salaries of probation officers; providing for detention homes for said children; providing for the punishment of persons responsible for, or contributing to, the dependency or delinquency of children; and giving to the superior court jurisdiction of such offenses, and repealing inconsistent acts," approved March 8, 1909, is hereby amended to read as follows:

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Juvenile court law.

Section 1. This act shall be known as the "juvenile court law" and shall apply only to persons under the age of twenty-one years not now or hereafter inmates of a state institution.

For the purposes of this act, the words "dependent person" shall mean any person under the age of twenty-one years:

(1). Who is found begging, receiving or gathering alms, whether actually begging or under the pretext of selling or offering anything for sale; or

(2). Who is found in any street, road or public place for the purpose of so begging, gathering or receiving alms; or

(3). Who is a vagrant; or

(4). Who is found wandering and not having any home, or any settled place of abode, or any proper guardianship, or any visible means of subsistence; or

(5). Who has no parent or guardian; or who has no parent or guardian willing to exercise, or capable of exercising, proper parental control; or

(6). Who is destitute; or

(7). Whose home by reason of neglect, cruelty or depravity of his parents or either of them, or on the part of his guardian, or on the part of the person in whose custody or care he may be, is an unfit place for such person; or

(8). Who frequents the company of reputed criminals, vagrants or prostitutes; or

(9). Who is found living or being in any house of prostitution or assignation; or

(10). Who habitually visits, without parent or guardian, any billiard room or pool room, or any saloon, or place where any spirituous, vinous or malt liquors are sold, bartered or given away; or

(11). Who persistently refuses to obey the reasonable and proper orders or directions of his parents or guardian; or

(12). Who is incorrigible; that is, who is beyond the control and power of his parents, guardian or custodian by reason of the vicious conduct or nature of said person; or

(13). Whose father is dead or has abandoned his family or is an habitual drunkard, or whose father or mother does not provide for such person, and it appears that such person is destitute of a suitable home or of adequate means of obtaining an honest living, or who is in danger of being brought up to lead an idle and dissolute or immoral life; or where both parents of such person are dead, or the mother or father, if living, is unable to provide proper support and care of such person; or

(14). Who is an habitual truant within the meaning of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of said act," approved March 24, 1903, and any act or acts amending or suspending the same and who is not placed in a parental school under the provisions of said act, or who being over the age of fourteen years refuses to attend public or private school, as directed by his parents, duly authorized guardian or legal custodian; or

(15). Who habitually uses intoxicating liquor as a beverage or habitu-

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ally smokes cigarettes or who habitually uses opium, cocaine, morphine or other similar drug, without the direction of a competent physician; or

(16). Who from any cause is in danger of growing up to lead an idle, dissolute, or immoral life.

The words "delinquent person" shall include any person under the age of twenty-one years who violates any law of this state, or any ordinance of any town, city, county or city and county of this state, defining crime.

Superior court to sit as juvenile court.

SEC. 2. The superior court in every county of this state shall exercise the jurisdiction conferred by this act, and, while sitting in the exercise of its said jurisdiction, shall be known and referred to as the "juvenile court," and is hereinafter so referred to. In counties having more than one judge of the superior court, the judges of such court shall from time to time designate one or more of their number whose duty it shall be to hear all cases coming under this act. In counties of the second class, such designation shall be made by the presiding judge. The orders and filings, if any, of the superior court, in all cases coming under the provisions of this act, shall be entered in a book to be kept for that purpose and known as the "juvenile court record," and the court when acting under this act shall be called the "juvenile court." All cases coming under the provisions of this act shall be heard at a special or separate session of the court, and no other matter shall be heard at such session, nor shall there be permitted to be present at such session any person on trial or awaiting trial, or under accusation of crime, who does not come under the provisions of this act.

Petition to court to deal with delinquent.

SEC. 3. Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent or delinquent person, and praying that the superior court deal with such person as provided in this act. Such petition shall be verified and shall contain a statement of facts constituting such dependency or delinquency, as defined in section one of this act, and the names and residence, if known to petitioner, of the parents or guardian of said dependent or delinquent person. There shall be no fee for filing such petition.

Citation to appear.

SEC. 4. Upon the filing of the petition provided for in section three hereof, a citation shall issue, requiring the person or persons having the custody or control of the alleged dependent or delinquent person, or with whom such alleged dependent or delinquent person may be, to appear with said alleged dependent or delinquent person at a time and place stated in the citation. Service of such citation must be made at least twenty-four hours before the time stated therein for such appearance. The parents or guardian of said alleged dependent or delinquent person, if residing within the county in which the court sits, and if their places of residence be known to the petitioner, or if there be neither parent nor guardian so

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residing, or if their places of residence be not known to petitioner, then some relative of said alleged dependent or delinquent person, if any there be residing within said county, and if his residence and relationship to such alleged dependent or delinquent person be known to petitioner, shall be notified of the proceedings by service of citation requiring him or them to appear at the time and place stated in such citation. In any case the judge may appoint some suitable person to act in behalf of said alleged dependent or delinquent person, and may order such further notice of the proceedings to be given as he may deem proper. If any person, cited as herein provided, shall fail, without reasonable cause, to appear and abide by the order of the court, or to bring said alleged dependent or delinquent person, if so required in the citation, such failure shall constitute a contempt of said court and may be punished as provided for in other cases of contempt of court. In case such citation can not be served, or the party served fails to obey the same, and in any case in which it shall be made to appear to the court that such citation will probably be ineffective, a warrant of arrest shall issue on the order of the court, either against the parent or guardian, or the person having the custody of said alleged dependent or delinquent person, or with whom the said alleged dependent or delinquent person may be, or against the said alleged dependent or delinquent person himself, or any or all said persons; or if there be no person to be served with citation as above provided, a warrant of arrest may be issued against the said alleged dependent or delinquent person immediately. On the return of the citation or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Until the final disposition of any case, the said alleged dependent or delinquent person may be retained in the possession of the person having charge of said person, or may be kept, upon the order of the court, in some suitable place, provided by the county, or city and county, or may be held otherwise as the court may direct.

Commitment of delinquents.

SEC. 5. When any alleged dependent or delinquent person under the age of twenty-one years shall be found by said court or judge to be dependent or delinquent, within the meaning of this act, the court may make an order committing said dependent or delinquent person, for such time as the court may deem fit, but not beyond the time when such dependent or delinquent person shall reach the age of twenty-one years, to the care of some reputable person of good moral character, or to the care of some association, society or corporation willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, or to the care of the probation officer or other person to remain in the home of said dependent or delinquent person; or the court may, if said dependent or delinquent person be a boy, commit him to the Preston State School of Industry, or to the Whittier State School, during his minority, or if a girl, commit her to the Whittier State School until twenty-one years of age; *provided, however,* that before conveying any such dependent or delinquent person to either of such institutions it shall be ascertained from the superintendent thereof whether such

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dependent or delinquent person can be received, and if such dependent or delinquent person can not be received, the court shall make such other order for the disposition of such dependent or delinquent person as is meet. After making any of the above mentioned orders the court may, from time to time, change or modify the same, or set aside the same, or commit such dependent or delinquent person to such place or institution, and for such time, as the court may deem fit, but not beyond the time when such person shall attain the age of twenty-one years.

Probation committee.

SEC. 6. The judge of the superior court in and for each county, or city and county, of the state, and in counties where there is more than one judge of the said court, the judge who has been designated as "judge of the juvenile court" shall, by an order entered in the minutes of the court, appoint seven discreet citizens of good moral character and of either sex, to be known as the "probation committee," and shall fill all vacancies occurring in such committee. The clerk of said court shall immediately notify each person appointed on said committee and thereupon said persons shall appear before the judge of the superior court to whom has been assigned all proceedings under this act, and qualify by taking an oath, which shall be entered in said juvenile court record, to faithfully perform the duties of a member of such probation committee.

Term of office.

SEC. 7. The members of such probation committee shall hold office for four years, and until their successors are appointed and qualify; *provided,* that of those first appointed, one shall hold office for one year, two for two years, two for three years, and two for four years, the terms for which the respective members shall hold office to be determined by lot as soon after their appointment as may be. When any vacancy occurs in any probation committee by expiration of the term of office of any member thereof, his successor shall be appointed to hold office for the term of four years; when any vacancy occurs for any other reason, the appointee shall hold office for the unexpired term of his predecessor.

Examination of societies.

SEC. 8. The juvenile court or the judge thereof may at any time require said probation committee or probation officer to examine into the qualifications and management of any society, association or corporation, other than a state institution, receiving, or applying for, any dependent or delinquent person under this act, and to report thereon to the court. It shall be the duty of each probation committee to prepare each year one or more reports in writing on the qualifications and management of all societies, associations and corporations, except state institutions, applying for or receiving any dependent or delinquent person under this act from the courts of their respective counties, and in such report said committee may make such suggestions or comments as to them may seem fit; such report to be filed in the office of the clerk of the court appointing such committee for the information of the court. The probation committee shall also

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make to the court an annual report to be filed prior to the first day of December. It shall be the duty of the probation committee to exercise a friendly supervision and visitation over the dependent or delinquent person in accordance with the direction of the court, to furnish the court information and assistance whenever required, and, from time to time, to advise and recommend to the court any change or modification of the order made in the case of a dependent or delinquent person as may be for the best interests of such person. Upon request of the probation officer, any member of the probation committee shall investigate an alleged case coming under the provisions of this act, and render a report thereon to the probation officer. The probation committee shall also have the control and management of the internal affairs of any detention home heretofore or hereafter established by the board of supervisors of their county; and it shall be the duty of the board of supervisors to provide for the payment of such employees as may be needed in the efficient management of such detention home.

Compensation and expenses of committee.

SEC. 9. Members of the probation committee shall serve without compensation, but shall be allowed their reasonable traveling expenses as approved by the judge of the juvenile court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and said expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses.

Probation officer.

SEC. 10. There shall be appointed, as hereinafter provided, a probation officer in every county, and he may appoint as many deputies as he may desire; *provided, however,* that such deputies shall not have authority to act until their appointment shall be approved in like manner as the appointment of the probation officer himself. Such deputies, except as hereinafter provided, shall serve without compensation.

Salaries.

Section 10*a*. In counties of the first class there shall be one probation officer and nineteen assistant probation officers. The salaries of said officers shall be as follows: Probation officer, two hundred dollars per month; two assistant probation officers, one hundred and fifty dollars per month, each; sixteen assistant probation officers, one hundred dollars per month, each; one probation officers' clerk at a salary of seventy-five dollars per month.

Section 10*b*. In counties, or cities and counties, of the second class there shall be one probation officer and ten assistant probation officers. The salaries of said officers shall be as follows: Probation officer, two hundred and twenty-five dollars per month; one assistant probation officer, one hundred and seventy-five dollars per month; and nine assistant probation officers, at one hundred and twenty-five dollars per month each.

Section 10*c*. In counties of the third class there shall be one probation

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officer, and eight assistant probation officers. The salaries of said officers shall be as follows: Probation officer, two hundred dollars per month; one assistant probation officer, one hundred and fifty dollars per month; three assistant probation officers, one hundred and twenty-five dollars per month, each; two assistant probation officers, one hundred dollars per month, each; one assistant probation officer, seventy-five dollars per month; and one assistant probation officer, fifty dollars per month.

Section 10*d*. In counties of the fourth class there shall be one probation officer and one assistant probation officer. The salaries of said officers shall be as follows: Probation officer, one hundred and fifty dollars per month; assistant probation officer one hundred dollars per month.

Section 10*e*. In counties of the fifth class there shall be one probation officer whose salary shall be one hundred and twenty-five dollars per month.

Section 10*f*. In counties of the sixth class there shall be one probation officer and two assistant probation officers. The salaries of said officers shall be as follows: Probation officer, one hundred and seventy-five dollars per month; one assistant probation officer, one hundred and fifty dollars per month; and one assistant probation officer, one hundred dollars per month.

Section 10*g*. In counties of the seventh class there shall be one probation officer and two assistant probation officers. The salaries of said officers shall be as follows: Probation officer, one hundred and twenty-five dollars per month; one assistant probation officer, one hundred and twenty dollars per month; and one assistant probation officer, one hundred dollars per month.

Section 10*h*. In counties of the eighth class there shall be one probation officer whose salary shall be one hundred dollars per month.

Section 10*i*. In counties of the ninth class there shall be one probation officer and two assistant probation officers. The salaries of said officers shall be as follows: Probation officer, one hundred dollars per month; one assistant probation officer, seventy-five dollars per month; and one assistant probation officer fifty dollars per month.

Section 10*j*. In each of the counties of the tenth class there shall be one probation officer who shall maintain an office in the court-house at the county seat. The salary of said probation officer shall be one hundred and twenty-five dollars per month.

Section 10*k*. In each of the counties of the eleventh, twelfth, thirteenth, seventeenth, twenty-third, twenty-fifth, twenty-seventh and thirty-third classes there shall be one probation officer. The salary of each of said probation officers shall be one hundred dollars per month. In counties of the thirteenth class there shall be one assistant probation officer whose salary shall be twenty-five dollars per month.

Section 10*l*. In counties of the thirty-fifth class there shall be one probation officer who shall maintain an office in the court-house at the county seat. The salary of said probation officer shall be one hundred dollars per month.

Section 10*m*. In each of the counties of the fifteenth class there shall

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be one probation officer. The salary of said probation officer shall be eighty dollars per month.

Section 10*n*. In each of the counties of the fourteenth, sixteenth, nineteenth, twentieth, twenty-second, thirtieth, thirty-second and thirty-eighth classes there shall be one probation officer. The salary of each of said probation officers shall be seventy-five dollars per month.

Section 10*r*. In each of the counties of the twenty-first, thirty-fourth and thirty-ninth classes there shall be one probation officer. The salary of each of said probation officers shall be fifty dollars per month.

Section 10*t*. In counties of the forty-eighth class there shall be one probation officer whose salary shall be twenty-five dollars per month.

Section 10*u*. In each of the counties of the forty-second, forty-fourth, fiftieth, fifty-second and fifty-fifth classes there shall be one probation officer. The salary of each of said probation officers shall be ten dollars per month.

Section 10*v*. In each of the counties of the fifty-seventh and fifty-eighth classes there shall be one probation officer. The salary of each of said probation officers shall be five dollars per month.

Section 10*z*. In every other county than those heretofore expressly enumerated the salary of the probation officer shall be thirty-five dollars per month.

Payment of salaries.

SEC. 11. The salaries of all probation officers and assistant probation officers shall be paid out of the county treasury of the county for which they are appointed, respectively, in the same manner as the salaries of county officers.

Expenses.

SEC. 12. The probation officers and assistant probation officers and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and said expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses.

Probation offices created.

SEC. 13. The offices of probation officers and assistant probation officer are hereby created. The probation officers and assistant probation officers to serve hereunder in any county or city and county shall be nominated by the probation committee in such manner as the judge of the juvenile court in the respective counties or city and county shall direct; and the appointment of such probation officers and assistant probation officers shall then be made by the judges of the respective juvenile courts. The term of office of the probation officers and of assistant probation officers shall be two years from the date of their said appointments. In counties, or cities and counties, where this act provides

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for one probation officer and one or more assistant probation officers, all of such officers shall devote their entire time and attention to the duties of their offices, and no such probation officer or assistant probation officer while holding such office and receiving salary therefor, shall be a candidate or seek the nomination for any other public office or employment, and no person shall be appointed to and receive the salary attached to such office of either probation officer or assistant probation officer who is related to the judge of the juvenile court or to a member of the probation committee of such county, or city and county, by consanguinity or affinity, within the third degree computed according to the rules of law. Such probation officers and assistant probation officers may at any time be removed by the judge of the juvenile court in his discretion.

Clerk to notify officer.

SEC. 14. It shall be the duty of the clerk of any court before which a dependent or delinquent person is brought under the provisions of this act, before hearing, to notify the probation officer of the county thereof.

Duties of probation officer.

SEC. 15. The probation officer shall inquire into the antecedents, character, family history, environment and cause of dependency or delinquency of every alleged dependent or delinquent person brought before the juvenile court, and shall make his report in writing to the judge thereof; *provided, however,* that only when the judge so specially orders shall he make such inquiry or report in the case of a dependent or delinquent person who has already been placed by the juvenile court in charge of a society, association or corporation which embraces within its objects the care of dependent or delinquent children, and which has in the last report thereon by the probation committee of such county been favorably passed upon. In the event that such a society, association or corporation shall be so in charge it shall through its agents or superintendent make such report to the judge of the juvenile court in place of the probation officer. It shall be the duty of said probation officer, agent or superintendent of such society, association or corporation to be present in court in order to represent the interests of the dependent or delinquent person when the case is heard, and to furnish to the court such information and assistance as it may require and to make such report at such time; and to take charge of said dependent or delinquent person before and after the hearing as may be ordered. Every probation officer, assistant probation officer and deputy probation officer shall have the powers of a peace officer. At any time, in his discretion, such officer may bring any dependent or delinquent person committed to his care before the court for such further or other action as the court may deem proper. Every probation officer shall have the powers of a school attendance officer, in such portions of the county, in which such probation officer has been ap-

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pointed, as are not otherwise provided with a school attendance officer, and shall exercise such powers when not inconsistent with his other duties. Any of the duties of a probation officer may be performed by an assistant or deputy probation officer, and shall be so performed whenever directed by the probation officer; and it shall be the duty of the probation officer to see that his assistant and deputy probation officers perform their duties.

Suspension of proceedings in other than superior court.

SEC. 16. Whenever a deposition or complaint shall be filed in any court other than a superior court, charging a person with a crime and it shall be suggested to the judge, justice or recorder before whom such person is brought that the person charged is under the age of eighteen years, said judge, justice or recorder shall immediately suspend all proceedings against such person on said charge and examine into the age of such person and if, from such examination, it shall appear to the satisfaction of said judge, justice or recorder that such person is under the age above specified, he shall forthwith certify to the juvenile court of his county (*a*) that said person (naming him) is charged with such crime (briefly stating its nature); (*b*) that such person appears to be under the age of eighteen years and giving date of birth when known, and (*c*) the suspension of proceedings against such person on such charge by reason of his age, with the date of such suspension; and immediately thereupon all proceedings against the said person on said charge shall be suspended until said juvenile court shall issue its mandate, as hereinafter provided, directing the court before which said charge was pending to proceed with the examination into or trial thereof, and the court so suspending its proceedings shall forthwith cause such person to be taken before the juvenile court of the county for consideration and proceedings under this act. When such person shall be brought before the judge of the juvenile court said judge shall cause a complaint to be filed as provided in section 3 of this act and shall fix a time for considering said matter and shall cause citation to be issued, as provided in section 4 of this act. Pending such hearing, said judge may admit such person to bail or otherwise provide for his temporary custody in any manner provided herein for the care of a dependent or delinquent person after the finding of his delinquency. The judge of said juvenile court may further investigate the age of such person and may also inquire into the condition and care of such person and make such orders for his disposition under the provisions of this act as he may deem proper. If said judge shall, after such investigation, decide that such person was at the time said offense was alleged to have been committed of the age of eighteen years or more, such determination shall be conclusive and he shall immediately issue his mandate directing the court before which such charge is pending to proceed therewith, and upon receipt of such mandate said court shall proceed with the examination or trial of said charge as though no suspension thereof had taken place; *provided, however,* that if the court shall find that the person so charged is under

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the age of twenty-one years but a fit subject for consideration under the provisions of this act, he may make such order or orders hereunder as he may deem best in relation to such person; *provided further, however,* that if such judge shall at any time conclude that such person is not a fit subject for further consideration under this act, he may remand such person to the court in which said person is charged with said offense for further proceedings on said charge, and upon receipt of the mandate of said juvenile court, or the judge thereof, the court before which said charge is then pending shall be vested with full authority to proceed with the examination or trial thereof. All statutes of limitations relating to the charge so pending against such person shall be suspended as to said person and charge from the issuance by said judge, justice or recorder of his certificate hereinbefore provided for until said juvenile court, or judge thereof, shall issue its mandate remanding such person for further proceedings as aforesaid; and all statutes of limitation relating to any charge, made in any court, against any person under the age of twenty-one years, shall be suspended as to such charge and person whenever, and as long as, such person is before the juvenile court for consideration under the provisions of this act, or is detained by virtue of any commitment issued hereunder and unrevoked; *provided, however,* that if said delinquent person shall be discharged by the juvenile court as reformed, such order of discharge shall constitute a bar to any further proceedings in any court against said dependent or delinquent person upon said charge.

Petition that person is delinquent.

SEC. 17. Whenever it is claimed that any person under the age of twenty-one years is a dependent or delinquent person as defined in this act, a verified petition shall be filed in the juvenile court of the county wherein said alleged dependency or delinquency occurred, stating such dependency or delinquency and the facts constituting the same, and that said dependent or delinquent person is under the age of twenty-one years, and praying that the said court shall adjudge said person to be a dependent or delinquent person within the meaning of this act. Notice shall be given of the time and place of hearing as in the case of a person alleged to be a dependent or delinquent person, and the petition shall be heard at the time and place designated by the juvenile court. If the court shall adjudge said person to be a dependent or delinquent person, within the meaning of this act, such order shall be made as is meet in the premises, as in this act provided. If upon said hearing said court shall determine that said dependent or delinquent person is not a fit and proper subject to be dealt with under the reformatory provisions of this act, said court may dismiss the petition hereunder and direct that such dependent or delinquent person be prosecuted under the general law. No dependent or delinquent person under eighteen years of age shall be prosecuted for crime until the matter has first been submitted to the juvenile court by petition as herein provided, or by certificate of the lower court as provided in section sixteen hereof.

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Persons over eighteen and under twenty-one accused of felony may be dealt with.

SEC. 18. Whenever any person over the age of eighteen years and under the age of twenty-one years is accused of a felony, and the indictment or information has been filed in the superior court of the county wherein the crime was committed, charging said person with the commission of said felony, the judge may, in his discretion, with the consent of the accused, or upon his request, arrest said proceeding at the time of arraignment or at any time previous to the impanelment of a jury, except where the crime charged is a capital offense and may proceed to investigate the charge against the defendant, and all the facts and circumstances necessary to determine the proper disposition to be made of said person, and shall determine whether said person shall be dealt with as a delinquent under the provisions of this act. If the court is satisfied upon such investigation that said person should be declared a delinquent and should be dealt with under this act, it may make such order as herein provided for the disposition of delinquent persons. If such person thereafter prove not to be amenable to the discipline of the school to which he may be committed, and the trustees thereof shall determine that said person should be committed to a state penitentiary, such person shall be returned to the custody of the sheriff of the county in which such crime was committed, and thereafter proceedings shall be had upon the indictment or information commencing at the point at which proceedings were arrested; and said person shall be tried for the offense alleged in the information, and if convicted shall be sent to the penitentiary for such time as the court may determine, or otherwise dealt with in accordance with the law for dealing with persons convicted of a felony. If no request is made by the defendant for proceedings under this statute, or if the defendant desires a trial by jury, or if the judge declines to consent to the application of the defendant for proceedings under this statute, said cause shall proceed in the ordinary manner up to the verdict of guilty or not guilty as the case may be. If said person is convicted, the court may thereafter receive such evidence as may be offered, touching the question as to whether or not said person should be dealt with as a delinquent in the manner hereinbefore provided in case of the application and consent of the accused before trial, and may make such order of probation or commitment to said state schools, and may from time to time modify said probation orders, as is herein provided in the case of persons adjudged delinquent. If such person during the period of his commitment to said state institution, proves to be incorrigible or not amenable to the discipline of such institution, and it shall be deemed advisable in the judgment of the trustees of such institution that said person be sent to the penitentiary, then said person shall be returned to the superior court in which the verdict was rendered, for sentence, and thereupon the court shall pronounce judgment.

Person may be detained in detention home.

SEC. 19. In the case of a person alleged to be delinquent within the meaning of this act, the juvenile court may, pending the hearing, at any time before the person is adjudged delinquent or otherwise disposed of.

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order that said person be detained in any detention home, provided for that purpose by any county or it may be otherwise temporarily provided for as to the court may seem fit in any manner provided herein for the care of a person after the termination of his delinquency.

Commitment of delinquent.

SEC. 20. If the court find a person to be delinquent, then the court may commit such person to the care and custody of the probation officer and may allow the said person to remain in the home of said person, subject to the visitation of a probation officer, and such person shall report to the probation officer as often as may be required, and be subject to be returned to the court for further proceedings whenever such action may appear necessary or desirable, or the court may commit the person to the care and custody of the probation officer, to be placed in a suitable family home subject to the supervision of said probation officer and the further order of the court; or it may order the probation officer to board out the person in some suitable family home in case provision is made by voluntary contribution or otherwise for the payment of the board of said person until suitable provision may be made for said person in a home without such payment; or the court may commit said person for such time until such person arrives at the age of twenty-one years as to the court may seem fit, to the care and custody of some association, society or corporation that will receive it, embracing within its object the care of dependent or delinquent children; or the court may commit said person to a state school as hereinbefore provided, or to such other state institution as may be authorized by law to receive it; *provided further,* that should the legislative body of the county or city and county, or of a municipality, provide a suitable place for the detention of dependent or delinquent persons which they are hereby authorized and required to do, such dependent or delinquent persons may be committed thereto after the adjudication of dependency or delinquency for a definite period to be specified in such order, at the end of which time said person shall be brought before the court for further order of court. The court may thereafter set aside, change or modify said order and provide for a further detention in said place. The court shall retain the jurisdiction of any person who is found to be delinquent until such person attains his majority, or if a girl, until she attains the age of twenty-one years, unless she is married with the consent of the court, or until said court is satisfied that said person has fully reformed and that further direction and supervision under the provisions of this act are unnecessary for said person's reformation. If a boy, said person may be committed by said court to the Whittier State School or the Preston State School of Industry at any time during his minority for the period of his minority. If a girl, she may be committed to the said Whittier State School at any time before she is twenty-one years of age until she is twenty-one years of age. Such person may be committed to any other institution now or hereafter provided by the state for such persons. If such person after being committed to the Whittier State School or the Preston State School of Industry or such other institution, shall there prove to be incorrigible or incapable of reformation under the discipline of the school to which such

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person may be committed, such person may be returned to the court for such further order or disposition as may at that time be determined. Upon the return of said person to the custody of the juvenile court, if said person be accused of felony, it shall be the duty of the judge of said court to sit as a committing magistrate and hold the preliminary examination of such person, and if upon said hearing he shall determine that there is probable cause to believe that the said person has committed the offense charged in the petition theretofore filed in said court, he shall hold such person to answer to the superior court, and thereupon, the usual proceedings shall be had for the trial of said case in the superior court after the filing of the information in pursuance to said order of said judge sitting as a committing magistrate, and said person shall be tried by court and jury in the usual manner for the trial of a felony; *provided, however,* that no minor under the age of fourteen years at the time of the commission of the offense with which he is charged shall ever be sent to a penitentiary until he has first been committed to the Whittier State School or the Preston State School of Industry and has there proved to be incorrigible or not amenable to the discipline of said school. No minor who is under the age of eight years or who is suffering from any contagious, infectious or other disease which would probably endanger the lives or health of the other inmates of said state schools shall be committed thereto. No person shall be committed to said state schools unless the judge of said court shall be fully satisfied that the mental and physical condition and qualifications of said person are such as to render it probable that such person will be benefited by the reformatory educational discipline of such schools.

Expenses of delinquent.

SEC. 21. Any order providing for the custody of a dependent or delinquent person may provide that the expense of maintaining such person shall be paid by the parent or parents or guardian of such person, and in such case shall state the amount to be so paid, and shall determine whether or not the parent or parents or guardian shall exercise any control of said person, and define the extent thereof. Any disobedience of such order or interference with the custody of the person as therein determined shall constitute a contempt of court. If it be found, however, that the parent or parents or guardian of a dependent or delinquent person is unable to pay the whole expense of maintaining such person, the court may, in the order providing for the custody of such person, direct such additional amount as may be necessary to support such person to be paid from the county treasury of the county for the support of such person, the amount so ordered to be paid from the treasury of said county not to exceed, in case of any one person the sum of eleven dollars per month; *provided, further,* that no order for the payment of all or part of the expense of support and maintenance of a dependent or delinquent person from the county treasury shall be effective for more than six months, unless a new order is secured at the expiration of that period. The court may thereafter set aside, change or modify any order herein provided for.

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Order of court may be changed.

SEC. 22. Any order made by the court in case of a dependent or delinquent person may at any time be changed, modified or set aside as to the judge may seem meet and proper.

Private hearing.

SEC. 23. Any person may have a private hearing upon the question of his dependency or delinquency, and upon the request of said person or either of his parents or guardian, such hearing may be had privately in the manner provided by law for private hearings at preliminary examinations. An order of court adjudging a person dependent or delinquent under the provisions of this act shall in no case be deemed to be a conviction of crime.

Person under sixteen not to be committed to jail before trial.

SEC. 24. No court, judge, magistrate or peace officer shall commit a person under sixteen years of age to any jail or prison, before trial and conviction, but if any such person is not released pending such hearing, he may be committed to the care and custody of a sheriff, constable or other peace officer who shall keep such person in a detention home or some other suitable place outside of the enclosure of any jail or prison, as the court may direct. When any person under sixteen years of age shall be sentenced to confinement in any institution to which adult convicts or prisoners are sentenced or confined, it shall be unlawful to confine such persons in the same room, yard or enclosure with such adult convicts or prisoners, or to permit such person to come or remain in contact with such adult convicts or prisoners.

Detention home.

SEC. 25. It shall be the duty of the legislative body of every county, or city and county, immediately upon this act becoming effective, to provide and thereafter maintain, at the expense of such county, or city and county, in a location approved by the judge of the juvenile court, a suitable house or place to be known as the "detention home" of said county, or city and county, for the detention of dependent and delinquent persons. Such detention home must not be in, or connected with, any jail or prison, and shall be conducted in all respects as nearly like a home as possible and shall not be deemed to be or treated as a penal institution. Such legislative body must also provide for a suitable superintendent and matron to have charge of such detention home, and for such other employees as may be needed in the efficient management of such detention home, and provide for the payment, out of the general fund of the county, or city and county, of suitable salaries for such superintendent and matron, and such other employees, such superintendent, matron and other employees to be appointed by said legislative body, upon the nomination of the probation committee and approval of the judge of the juvenile court. The superintendent, matron or other employee for such detention home may, at any time, be removed by the probation committee, in its discretion.

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Parents may be fined or imprisoned.

SEC. 26. In all cases where any child shall be dependent or delinquent under the terms of this act, the parent or parents, legal guardian or person having the custody of such person or any other person who shall, by any act or omission, encourage, cause or contribute to the dependency or delinquency of such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding one thousand dollars or imprisonment in the county jail for not more than one year or by both such fine and imprisonment, and the juvenile court shall have jurisdiction of all such misdemeanors; *provided, however,* that the court may suspend sentence for a violation of the provisions of this section and impose conditions as to the conduct, in the premises, of any person so convicted, and make such suspension to depend upon the fulfillment by such person of such conditions, and, in case of the breach of such conditions, or any thereof, the court may impose sentence as though there had been no such suspension. The court may also, as a condition of such suspension, require a bond in such sum as the court may designate, to be approved by the judge requiring same, to secure the performance by such person of the conditions imposed by the court on such suspension. Such bond shall by its terms be made payable to the State of California, and any moneys received for a breach thereof shall be paid into the county treasury.

Act to be liberally construed.

SEC. 27. This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care, custody and discipline of a dependent or delinquent person as defined in this act shall approximate as nearly as may be that which should be given by his parents, and in all cases where it can be properly done, the dependent or delinquent person as defined in this act shall be placed in an approved family, with people of the same religious belief, and become a member of the family, by legal adoption or otherwise. No dependent or delinquent person as defined in this act shall be taken from the custody of his parent or legal guardian, without the consent of such parent or guardian, unless the court shall find such parent or guardian to be incapable, or has failed or neglected to provide proper maintenance, training and education for said person; or unless said person has been tried on probation in said custody, and has failed to reform, or unless the court shall find that the welfare of said person requires his custody shall be taken from said parent or guardian. In this act, words used in any gender shall include all other genders, and the word "county" shall include "city and county," the plural shall include the singular and the singular shall include the plural.

Supersedes act of 1889.

SEC. 28. This act shall supersede all provisions of the act entitled "An act to establish a state reform school for juvenile offenders, and to make an appropriation therefor," approved March 11, 1889, and all amendments thereto, and all provisions of the act entitled: "An act to establish a school of industry and to provide for the maintenance and management of same,

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and to make an appropriation therefor," approved March 11, 1889, and all amendments thereto relating to the mode of commitments to the institutions therein named; but said acts shall control as to all matters concerning the management of said institutions, respectively.

Acts repealed.

SEC. 29. An act entitled: "An act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act and prescribing the duties of such boards; and providing when proceedings under this act shall be admissible in evidence," approved February 26, 1903; and the amendments thereto approved March 22, 1905, and March 27, 1907, are hereby repealed; *provided, however,* that all orders and judgments made heretofore under said act shall continue in full force and effect, and that the court shall retain jurisdiction of all children heretofore declared dependent or delinquent, and such children shall be hereafter dealt with in the same manner as if such orders had been made under the provisions of this act, and all proceedings now pending shall be continued under the provisions of this act. All children now on probation from justice courts shall remain on probation for the period fixed in the judgment, and if required may be certified to the superior court in the manner in said act provided. When so certified the said certificate shall be dealt with in the same manner as herein provided for a petition alleging delinquency.

PRESTON SCHOOL OF INDUSTRY

An act to establish a school of industry, to provide for the maintenance and management of the same, and to make an appropriation therefor.

[Approved March 11, 1889.]

Preston School of Industry.

SECTION 1. There shall be established at or within a convenient distance from Ione City, in the county of Amador, in said State, an educational institution to be designated as the Preston School of Industry.

Appropriation.

SEC. 2. The sum of one hundred and sixty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of purchasing and preparing grounds for the erection of buildings thereon, for the purchase of the necessary furniture, machinery, and supplies, and for the payment of the current expenses of said school.

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Government and supervision.

SEC. 3. The general government and supervision of said school shall be vested in a board of trustees, consisting of three citizens of the State of California, who shall be appointed by the governor. The members of said board shall hold their offices for the respective terms of two, three, and four years, from the first day of July, eighteen hundred and ninety-three, and until their successors shall be appointed and qualified, said respective terms to be designated in their appointments; and thereafter, upon the expiration of such terms, there shall be one of said board appointed, whose term of office shall be continued four years, and until his successor is appointed and qualified. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same. [*Amended February 27, 1893.*]

Site.

SEC. 4. The board shall, with all convenient dispatch, select and establish a site at some suitable place in said county for said institution, and procure the right of way for suitable drainage; said site to contain not less than one hundred acres nor more than three hundred acres of land, to have water facilities sufficient for the uses of said school, and for power in operating machinery; the land to be of a quality suitable for general farming purposes, and adapted to the cultivation of vines and fruit trees. The land so set apart by said purchase shall hereafter be used exclusively for the occupancy and purposes of said school. It shall be indicated by fixed corners and definite boundaries. A description thereof, together with the deed therefor, shall be filed with the secretary of state at his office within thirty days after the purchase of the same.

Plans for building and grounds.

SEC. 5. Thereafter the board shall cause to be prepared and shall adopt plans for the grounds, buildings, and fixtures necessary for such an institution, of such form, dimensions, and style as to it shall seem best adapted to the purposes thereof. In the preparation of such plans, and in the construction of the buildings, it may employ a competent architect at a reasonable compensation.

Board not to be interested in contract.

SEC. 6. No member of the board or employee of the institution shall be interested in any contract or enterprise in connection with said school. [*Amended February 27, 1893.*]

Construction of act.

SEC. 7. This act shall be construed as the sole and exclusive act on the subject-matter contained herein, unless specially or otherwise herein provided; and none of the provisions of an act entitled "An act to regulate contracts on behalf of the state in relation to erections of buildings," approved March 23, 1876, or any other act, unless herein specially referred to, shall apply to or govern or limit this act, or any of the powers or duties in this act conferred upon said board.

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SEC. 8. Nothing in this act contained shall be so construed as to permit any convict or convicts, undergoing sentence in either of the state prisons of California, to associate with or be so employed as to mingle with any person or persons undergoing commitment in the said school.

Military discipline.

SEC. 9. The said school shall be conducted on such plan as to the board may seem best calculated to carry out the intentions of this act, and its inmates shall be subject to military discipline, including daily drill. They shall be clothed in military uniform of such pattern and material as may be prescribed by the board, but under no circumstances shall such inmates be clothed in convict stripes while undergoing commitment in said school. [*Amended February 27, 1893.*]

Compensation.

SEC. 10. The members of the board shall receive no compensation for their services, but shall be allowed their reasonable expenses incurred while in the discharge of their official duties. The superintendent shall receive a salary, to be fixed by the board, not to exceed three thousand dollars per annum. The military instructor shall receive a salary, to be fixed by the board, not to exceed twelve hundred dollars per annum. The secretary and commissary shall each receive a salary, to be fixed by the board, not to exceed fifteen hundred dollars per annum. The salary of no other officer or employee of the school shall exceed twelve hundred dollars per annum. The power of the board to fix the compensation of the officers and employees, as provided in section twelve of this act, shall be subject to these limitations. [*Amended February 27, 1893.*]

Superintendent.

SEC. 11. The board shall elect a superintendent, a military instructor, and a secretary. The superintendent and secretary shall give such bonds for the faithful performance of their duties as the board shall determine. The bond of the superintendent shall be for a sum of not less than ten thousand dollars, and that of the secretary of not less than five thousand dollars. The military instructor must be a man who is a good disciplinarian and skilled in military tactics. He shall receive from the governor a commission with the rank of major. He shall perform such duties and receive such salary as the board may prescribe. The board shall meet once in three months for the transaction of business. Special meetings may be called by the president when deemed necessary.

Instruction.

SEC. 12. The board shall cause to be organized and maintained a department of instruction for the inmates of said school, with a course of study corresponding as far as practicable with the course of study in the public schools of this state, but the course shall not be higher than the course prescribed in grammar schools. They shall adopt a system of government, embracing such laws and regulations as are necessary for the guidance of the officers and employees, for the regulation of the hours of study and

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labor, for the preservation of order, for the enforcement of discipline and military training, for the preservation of health, and for the industrial training of the inmates. The ultimate purpose of all such instruction, discipline, and industries shall be to qualify the inmates for honorable and profitable employment after their release from the institution, rather than to make said institution self-sustaining. The board shall also determine the number of officers and employees required, and shall prescribe their duties and fix the amount of their compensation.

Duty of superintendent.

SEC. 13. The superintendent, before entering upon the discharge of his duties, shall make and file with the board an oath that he will faithfully and impartially discharge the duties of his office. Thereupon he shall, subject to the regulations prescribed by the board, be invested with the custody of the lands, buildings, and all other property belonging to and under the control of the said institution. He shall receive for his services a salary not exceeding the sum of three thousand dollars per annum. He shall appoint, except as hereinbefore provided, all officers and employees of said institution, who shall hold office during his pleasure. He shall provide a book in which shall be registered the name, residence, occupation, and religious creed of every boy received into the school; the date of his reception, and the date and condition of his discharge; the names, residence, and occupation of his parents; whether the boy was apprenticed or not, and if so apprenticed, the name, residence, and occupation of the person to whom he was apprenticed. He shall have charge of all persons committed to the institution by any magistrate or court, shall use his best efforts to employ, instruct, discipline, and reform all such persons under his charge, and shall discharge such other duties as the said board may direct, and shall at all times be subject to removal by the board for incapacity, immorality, negligence of duty, or cruelty to the inmates.

SEC. 14. Repealed February 27, 1893.

Commitment.

SEC. 15. When any boy under the age of eighteen years shall be found guilty, by a magistrate or court of competent jurisdiction, of any offense punishable by fine, or by imprisonment, or by both, and who, in the opinion of such magistrate or court would be a fit subject for commitment to the said school, it shall be lawful for the magistrate or court to suspend judgment or sentence (except when the penalty is life imprisonment or death), and to commit such boy to the said school for a period not exceeding the time when he shall attain his twenty-first birthday, unless sooner discharged by law, or as in this act provided; but no boy who is under the age of eight years, or who is of unsound mind, shall be committed to the said school. The board shall have authority to make rules reducing, as the reward for good conduct, the time for which such person or persons have been committed. It shall be the duty of all courts and magistrates committing any boy to such school to certify to the superintendent thereof the age of the person so committed, as nearly as can be ascertained by testi-

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mony taken under oath before such court or magistrate, or in such manner as the court or magistrate may direct.

Approval of commitments.

SEC. 16. Before any commitment, made by a police court, or by a justice of the peace, under this act, shall be executed, it shall be approved by a judge of the superior court of the county in which the police court or justice of the peace has jurisdiction, and his approval indorsed on the warrant of commitment. But if such sentence shall be disapproved, the police court or justice of the peace shall then impose the ordinary sentence prescribed by law.

Dismissals.

SEC. 17. It shall be lawful for the board, whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal, and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed, and all those who shall have served the full term of their respective sentences, shall thereafter be released from all penalties and disabilities resulting from the offenses or crimes for which they were committed. Upon the final discharge of any inmate as in this section provided, the superintendent shall immediately certify such discharge in writing, and shall transmit the certificate to the magistrate or court by which such inmate or boy was committed. Said magistrate or court shall thereupon dismiss the accusation and the action pending against said person.

Parole.

SEC. 18. There shall be established in said school a system of marking and grading upon merit or attainments in school and shop and general conduct, by which the boy committed under this act may work out his way to parole and honorable discharge. When in the opinion of the superintendent a boy, by the regulations established for that purpose, has earned the right to a parole, he shall cause to be obtained a reputable home or place of employment where said boy may be employed and earn a living by honorable labor, and then shall recommend said boy to the board for parole, and if the board is satisfied that it is for the welfare of such boy to be paroled, it shall grant such parole under such condition as it may deem best, which shall be continued until such boy has proved his ability for honorable self-support when he shall, upon the recommendation of the superintendent, be honorably discharged. Any boy who, while on parole, violates the conditions of the parole may be returned to said school. [*Amended April 16, 1909.*]

Incorrigibles.

SEC. 19. Any boy committed to said school who, after due trial, is found to be, in the opinion of the superintendent, incapable of reformation or so morally deficient or incorrigible as to render his retention detrimental to the interests of said school, or when it is ascertained by good and sufficient

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evidence that said boy has misrepresented his age to the court who sentenced him, or has been previously convicted of a felony, he may recommend such boy to the board for return to the said court, and if the board is satisfied that it is for the best interests of the school that such boy be returned, it shall so cause him to be returned to the said court, and it shall be lawful for said court to annul and set aside the previous commitment to said Preston School of Industry and resume proceedings where the same were suspended when such commitment was made. [*Amended April 16, 1909.*]

Transfer from state prison.

SEC. 20. Any boy under the age of eighteen years, who is undergoing sentence in any state prison in this state (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the state board of prison directors, with the approval of the governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for the other inmates of the institution.

Aiding escape.

SEC. 21. Any person who knowingly permits, or who aids any boy to escape from the said school, or who knowingly promotes his departure, or conceals him with the intent of enabling such escaped boy to elude pursuit, shall be guilty of a misdemeanor, and shall, upon conviction, be punished according to law. Any fugitive from said institution, or from the parties to whom he is bound out or apprenticed, may be arrested and returned to the institution by any person upon written request or order of the superintendent directed to such person.

Contracts for provisions.

SEC. 22. The board of trustees are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and other staple supplies of the school for any period of time not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such articles as the board may desire to contract for shall be given to the lowest bidder at a public letting thereof, and if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditioned upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a bond, with good and sufficient sureties, in such sum as the board may require, and to their satisfaction, that he will faithfully perform his contract. If the proper officer reject any article as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the school may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof over the contract price from the amount due to

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the bidder, or charge the same up against him. Notice of the time, place, and conditions of the letting of contracts shall be given for at least two consecutive weeks in one newspaper printed and published in the city and county of San Francisco, in one newspaper printed and published in the city of Sacramento, and in one newspaper printed and published in the county of Amador. If all bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for such time and in such papers as they see proper for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the state, or they may divide the contract between the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate, or they may segregate the items and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person who had a prior contract, and who had not in the option [opinion] of the board faithfully complied therewith. [*Amended February 27, 1893.*

Proclamation of governor.

SEC. 23. When the premises are ready for occupancy, the board shall certify such fact to the governor, who shall make due proclamation thereof. Thereafter it shall be lawful for any competent magistrate or court to commit juvenile offenders to the institution, as herein provided.

Expenditures.

SEC. 24. The controller of state is hereby authorized and directed, on requisition of the said board, to draw his warrant on the state treasurer in favor of said board, to pay for the necessary expenditures in the establishment and maintenance of the said school, and the state treasurer is authorized to pay the same from the appropriations provided for in this act.

Effect of other acts in conflict.

SEC. 25. For the purpose of giving practical effect to the provisions of this act, all laws or parts of laws which conflict with the provisions hereof are, for the purposes of this act only, suspended, and hereby made inapplicable to any boy committed to and in the custody of said school.

Sheriffs' fees.

SEC. 26. In all proceedings relating to commitments under this act the fees and compensation of the sheriff and other officers of the court shall be such as are allowed by law for like proceedings and services in criminal cases.

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Construction of act.

SEC. 27. This act shall be construed in conformity with the intent as well as with the express provisions hereof, and shall confer upon the board authority to do all those lawful acts, from time to time, which are necessary to promote the prosperity of the institution and the well being and reformation of its inmates, including the organization of trade schools, the purchase and use of fixed and moveable machinery, the erection of necessary buildings for machinery and other purposes, the improvement and management of a farm, orchard, and garden, the purchase of necessary supplies for the institution, and materials for manufacture, and performance of all other necessary and lawful acts, not otherwise prohibited, which may be required to comply with the purposes of this act; but nothing herein contained shall be so construed as to permit said board to incur any indebtedness or obligation in excess of the appropriations allowed by law for the establishment and maintenance of said school.

SEC. 28. This act shall take effect and be in force from and after its passage.

THE WHITTIER STATE SCHOOL.

An act to establish a school for the discipline, education, employment, reformation, and protection of juvenile delinquents, in the State of California, to be known as "The Whittier State School."

[Approved March 11, 1889; title amended March 23, 1893.]

Whittier State School.

SECTION 1. There shall be established and maintained in this State, and located at Whittier, in the county of Los Angeles, an institution for the discipline, education, employment, reformation, and protection of juvenile delinquents in the State of California, to be known as "The Whittier State School"; and in all judicial, official, or other proceedings, and in all contracts, transfers, or other instruments in writing, the above name shall be deemed a sufficient designation of said institution. [*Amended March 23, 1893.*]

Board of trustees.

SEC. 2. The general supervision and government of said institution shall be vested in a board of trustees consisting of three citizens of the State of California, who shall be appointed by the governor with the advice and consent of the senate. The members of said board shall hold their offices for the respective terms of two, three, and four years from the first day of March, eighteen hundred and eighty-nine, and until their successors shall be appointed and qualified said respective terms to be designated in their appointments; and thereafter there shall be one of said board appointed in the same manner every two years, whose term of office shall continue four years, and until his successor is appointed and qualified. If a vacancy shall occur in said board by expiration of the term of any such trustee, or otherwise, when the senate is not in session, the governor shall

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fill such vacancy for the unexpired term, subject to the approval of the senate at its next regular session. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same.

Powers.

SEC. 3. The trustees of such institution shall be a body corporate and politic for certain purposes, namely: To receive, hold, use, and convey or disburse moneys or other property, real and personal, in the name of said corporation but in trust and for the use and by the authority of the State of California, and to control, manage, and direct the several trusts committed to them respectively, including the organization, government, and discipline of all officers, employees, and other inmates of said institution, with power to make contracts, to sue and be sued, plead and be impleaded, to have and to use a common seal, and to alter the same at pleasure, and to exercise all the powers usually belonging to said corporations and necessary for the successful discharge of the obligations devolved by law upon said members of trust; *provided,* that they shall not have power to bind the state by any contract or obligation beyond the amount of appropriations which may at the time have been made for the purposes expressed in the contract or obligation, nor to sell or convey any part of the real estate belonging to such institution without the consent of the legislature, except that they may release any mortgage, or convey any real estate which may be held by them as security for any money or upon any trust, the terms of which authorize such conveyance; *and provided further,* that the legislature shall have power at any time to amend, alter, revoke, or annul the grant of corporate powers herein contained.

Selection of site.

SEC. 4. The said board of trustees are hereby empowered with full power and authority to select a site for the permanent location of said school in the county of Los Angeles. Said trustees shall, within thirty days after their appointment and qualification, examine the different sites offered by the people of the county of Los Angeles for the location of the said school, and select therefrom a suitable location for said buildings; and the site selected by them shall be and remain the permanent site for said school; said site to contain not less than forty nor more than one hundred and sixty acres, giving preference, other things being equal, to a location central and easy of access from all parts of the county or state; *provided,* that no buildings shall be commenced or erected in said county of Los Angeles until a deed in fee simple of the land selected by the said board of trustees shall be made to the state, and recorded in the records of the county recorder of said Los Angeles county, and said deed deposited in the office of the secretary of state. [*Amended March 23, 1893.*]

To adopt plans.

SEC. 5. The said board of trustees shall prepare and adopt plans for the grounds, buildings, and fixtures necessary and proper for such an insti-

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tution, not in their judgment to exceed in cost the amount of money hereinafter appropriated, but if practicable of such description that other buildings can be added to or enlarged without injury to their symmetry or usefulness; and may let or make all necessary contracts, with the approval of the governor, for the construction of such buildings and fixtures and the improvement of the grounds according to such plans. Said board of trustees shall use all practicable diligence in the commencement and completion of said buildings and fixtures, and the improvement of the grounds, according to such plans.

Trustee not to be interested.

SEC. 6. No trustee or employee of such institution shall be personally, directly or indirectly, interested in any contract, purchase, or sale made, or any business carried on in behalf of or for said institution. All contracts, purchases, or sales made in violation of this section shall be held and declared null and void, and all moneys paid to such trustee, employee, or any other person for his benefit, in whole or in part, in consideration of such purchases, contracts, or sales made, may be recovered back by civil suit, to be instituted in the name of the State of California, against such trustee, employee, or person acting in his behalf; and in addition it is hereby made the duty of the governor and the board of trustees, as the case may be, upon proof satisfactory of the fact of such interest, to immediately remove the trustee or employee delinquent as aforesaid, and to report the facts to the attorney general, who shall take such legal steps in the premises as he shall deem expedient.

Rules and regulations.

SEC. 7. The board shall make all needful rules and regulations concerning their meetings and the modes of transacting their business; shall take charge of said institution to see that its affairs are properly conducted, that strict discipline is maintained, and that suitable employment and education are provided for its inmates. They are authorized to make contracts for the purchase of furniture, apparatus, tools, stock, provisions, and everything necessary to equip the institution for the purposes herein specified, and to maintain and operate the same; *provided*, said board shall incur no expense nor contract any debt beyond appropriations made or donations given for the said school; and then only in such manner as may be prescribed by the act of appropriation or the instrument of donation. [*Amended March 23, 1893.*]

Officers.

SEC. 8. The board shall annually elect from their own number a president and a vice-president, whose term of office shall be for one year, and until their successors shall be duly appointed and qualified. They shall also elect a treasurer, not one of their own number, whose term of office shall be for two years, and until his successor shall be duly elected and qualified, who shall be at all times subject to removal by the board for good cause. [*Amended March 23, 1893.*]

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Superintendent.

SEC. 9. The board shall appoint a superintendent of said school, not of their own number, whose salary shall be fixed by said board, not to exceed three thousand six hundred dollars per annum, and shall also appoint such other officers and such assistants as the wants of the institution may from time to time require, and shall prescribe their duties and fix their salaries, as may be reasonable. [*Amended March 23, 1893.*]

Report of trustees.

SEC. 10. Said board of trustees shall, on or before the first day of December every two years, make to the governor a full and detailed report of their doings as such trustees, and of the expense of said institution, with such other information relating thereto as they may think interesting or useful to the state; which report shall be communicated by the governor to the next succeeding session of the state legislature. Said trustees shall receive no salary for their services as such from the State, but shall be allowed all necessary expenses incurred in the discharge of their duties.

Meetings.

SEC. 11. The board of trustees shall have a regular meeting once every three months, at such time and place as they may direct; special meetings may be called by the president of said board in all cases where it becomes necessary for such a meeting.

Duty of superintendent.

SEC. 12. The superintendent before entering upon the duties of his office shall take an oath faithfully to discharge the same and execute a bond with sureties to be approved by the board, in a sum to be fixed by the board, conditioned for the faithful performance of all his duties as such superintendent. He shall be a resident at the institution, and shall be ex officio the secretary of the board, taking charge of all books and papers. He shall have charge of the land, buildings, furniture, apparatus, tools, stock, provisions, and every other species of property belonging to the institution, subject to the direction and control of said board, and shall account to the board in such manner as they may require for all property intrusted to him, and all moneys received by him from whatever source shall be deposited with the treasurer. His books shall at all times be open to the inspection of the board, who shall at least once in every three months carefully examine the same and all accounts, vouchers, documents connected therewith, and make a report of the result of such examination in a book provided for the purpose. He shall have charge of the inmates of said institution; he shall discipline, govern, instruct, employ, and use his best efforts to reform the children and youth under his care, and shall at all times be subject to removal by the board for incapacity, cruelty, negligence, immorality, or any other good cause.

Duty of treasurer.

SEC. 13. The treasurer before entering upon the duties of his office shall take an oath faithfully to discharge the same, and shall execute a

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bond to the people of California with sureties to be approved by said board in at least double the sum of money for which he may be responsible as treasurer, conditioned for the faithful performance of all his duties as such treasurer; he shall take charge of all the funds of the institution, receiving the same and disbursing them on the written order of the superintendent, and shall account to the board in such a manner as they may require for all funds intrusted to him from whatever source. His books shall at all times be open to the inspection of the board and superintendent, who shall at least once in every six months carefully examine the same and all the accounts, vouchers, and documents connected therewith, and make a report of the result of such examinations. Such treasurer must be a citizen of Los Angeles county, and shall receive for his services a salary of six hundred dollars per annum.

Buildings for male and female inmates.

SEC. 14. Said board of trustees shall arrange the building or buildings to be used for said school, and the grounds about the same, so that a portion thereof may be used for the proper confinement, care, and education of the male inmates, and the remaining portion for the proper confinement, care, and education of the female inmates, and to the absolute exclusion of all communication of any kind or character between the sexes. [*Amended March 23, 1893.*]

Age of boys and girls.

SEC. 15. Whenever said institution shall have been so far completed as to properly admit of the reception of inmates therein, the governor shall make due proclamation of the fact, and thereafter it shall be lawful for said board of trustees to receive into its care and guardianship, boys between the ages of eight and nineteen years, and girls between the ages of eight and eighteen years, committed to its custody, as hereinafter provided. [*Amended April 19, 1909.*]

Who may be committed.

SEC. 16. When any boy between the ages of eight and nineteen years, or any girl between the ages of eight and eighteen years, shall be found guilty of any offense punishable by fine or imprisonment, or by both, in any court of competent jurisdiction in the state, and who, in the opinion of the judge thereof, would be a fit subject for training in said school, it shall be lawful for such judge to suspend judgment or sentence, except when the penalty is life imprisonment or death, and commit such boy or girl to the custody and guardianship of said school until he or she shall become twenty-one years of age. [*Amended April 19, 1909.*]

Truants.

SEC. 16*a*. Any child between the ages of eight and fourteen years who wilfully and habitually absents himself or herself from school contrary to the provisions of an act entitled "An act to enforce educational rights of children and providing penalties for violation of the act," approved March 24th, 1903, and as amended by an act approved March 20th, 1905, and as further amended by an act approved March 4th, 1907, may be committed

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to the custody and guardianship of said school by any superior court judge on the complaint of any peace officer, teacher, parent, guardian or other person, under the same conditions and in the same manner as is provided in section 16 of this act. [*Amended April 19, 1909.*]

Delinquent children.

SEC. 16*b*. Any child who comes under the provision of an act entitled an act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act and prescribing the duties of such boards; and providing what proceedings under this act shall be admissible in evidence, approved February 26th, 1903, may be committed to the Whittier State School by any superior judge under the same conditions and in the same manner as provided in section sixteen of this act. [*Amended March 7, 1905.*]

Condition and manner of commitment.

SEC. 16*c*. Any judge of any superior court of this state may commit any boy between the ages of eight and nineteen years, or girl between the ages of eight and eighteen years to the custody and guardianship of the said school on the conditions and in the manner following:

1. On the complaint in writing filed and due proof thereof made, by the parent or guardian of said boy or girl, showing that by reason of the incorrigible or vicious conduct of such boy or girl, he or she is beyond the control and power of such parent or guardian.

2. On complaint in writing filed and due proof thereof made, showing that such boy or girl is a proper subject for the care and guardianship of said school, by reason of vagrancy or incorrigible or vicious conduct; or in cases where, from moral depravity or otherwise, the parent or guardian having control of such boy or girl is incapable of exercising, or unwilling to exercise, the proper care or discipline over such boy or girl, and in cases where such boy or girl has no parent, guardian or other protector.

3. On complaint in writing filed and due proof thereof made by the mother, or guardian when the father is dead, or has abandoned his family, or is an habitual drunkard, or does not support his family, and it appears that such boy or girl is destitute of a home and adequate means of obtaining an honest living and is in danger of being brought up to lead an idle or immoral life. [*Amended April 19, 1909.*]

Citation to custodian of child.

SEC. 17. In all cases where complaint is made by another than the parent or guardian having the custody of said boy or girl, a citation shall issue requiring the person having custody or control of said boy or girl, or with whom the said boy or girl may be, to appear with him or her at a place and time stated in the citation. Service of such citation must be

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made at least twenty-four hours before the time stated therein. The parents or guardian of the boy or girl, if residing in the county in which the court sits, and if their places of residence be known to the petitioner, or if there be neither parent or guardian so residing, or if their places of residence be not known to petitioner, then some relative of the boy or girl, if there be any residing in said county, and if his residence and relationship to such boy or girl be known to petitioner, shall be notified of the proceedings by service of citation requiring them to appear at the time and place to be stated in such citation. In any case the judge may appoint some suitable person to act in behalf of the boy or girl, and may order such further notice of the proceeding to be given as he may deem proper. If any person, cited as herein provided, shall fail, without reasonable cause, to appear and abide by the order of the court, or to bring the boy or girl, if so required in the citation, such failure shall constitute a contempt of said court and may be punished as provided for in cases of contempt of court. In case any such citation cannot be served, or the party served fails to observe the same, and in any case in which it shall be made to appear to the court that such citation shall be ineffectual, a warrant of arrest may issue on the order of the court, either against the parent or guardian, or the person having the custody of the boy or girl, or with whom he or she may be, or against the boy or girl, or any of said persons; or if there be no person to be served with citation as above provided, a warrant of arrest may be issued against the boy or girl immediately. On the return of the citation or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Until the final disposition of any case, the boy or girl may be retained in the possession of the person having charge of the same, or may be kept, upon the order of the court, in some suitable place, provided by the county, or city and county, or may be held otherwise, as the court may direct. In all cases of commitment to said school the same shall be until said boy or girl is twenty-one years of age, and it shall be the duty of the court committing such boy or girl to such school to certify to the superintendent thereof, the date of birth or age of such boy or girl so committed, as nearly as the same can be ascertained by testimony taken under oath either before the court or in such manner as he may direct. [*Amended April 19, 1909.*]

Discharge of child.

SEC. 18. It shall be lawful for the board whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed and all those who have attained the age of twenty-one years shall thereafter be released from all penalties and disabilities resulting from the offenses or crimes for which they were committed. Upon the final discharge of any inmate as in this section provided, the superintendent shall immediately certify such discharge in writing and shall transmit the certificate to the court by which such inmate was committed. Said court, thereupon, shall dismiss

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the accusation and the action pending against said person. [*Amended April 19, 1909.*]

Right to parole.

SEC. 19. There shall be established in said school a system of marking and grading upon merit or attainments in school and shop and general conduct, by which the boy or girl committed under this act may work out his or her way to parole and honorable discharge. When in the opinion of the superintendent a boy or girl, by the regulations established for that purpose, has earned a right to a parole, he shall cause to be obtained a reputable home or place of employment where said boy or girl may be employed and earn a living by honorable labor, and then shall recommend said boy or girl to the board for parole, and if the board is satisfied that it is for the welfare of such boy or girl to be paroled, it shall grant such parole under such conditions as it may deem best, which shall be continued until such boy or girl has proved his or her ability for honorable self-support, when he or she shall, upon the recommendation of the superintendent be honorably discharged. Any boy or girl who, while on parole, violates any of the conditions of the parole may be returned to said school. [*Amended April 19, 1909.*]

Incorrigible child.

SEC. 20. Any boy or girl committed to said school who, after due trial, is found to be, in the opinion of the superintendent, incapable of reformation, or so morally deficient or incorrigible as to render his or her retention detrimental to the interests of said school, or when it is ascertained by good and sufficient evidence, that said boy or girl has misrepresented his or her age to the court who sentenced him or her, or has been previously convicted of a felony, he may recommend such boy or girl to the board of trustees for return to the said court and if the said board is satisfied that it is for the best interests of the school that such boy or girl be returned, it shall so cause him or her to be returned to said court, and it shall be lawful for said court to annul and set aside the previous commitment to the said Whittier State School and resume proceedings where the same were suspended when such commitment was made. [*Amended April 19, 1909.*]

Private examination.

SEC. 21. All minors between the ages of eight and eighteen years who may be accused of any offense under this act shall, with a view to the question whether they ought to be committed to said school, be entitled to a private examination before the court, to which only the parties to the case and the parent or guardian of the accused and such officers of the court as he may direct, and such attorneys as may be engaged in the hearing, shall be admitted, unless one of the parents, the guardian or other legal representative of the minor demands a public trial; in such cases the proceedings shall be in the usual manner. [*Amended April 19, 1909.*]

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Record.

SEC. 22. In all cases where the commitment is executed by the official person, whose proceedings are usually evidenced by the record, or where the occasion of the commitment is a criminal charge or conviction against the infant, no other record shall be made (unless demanded by the infant, his parent, or guardian) than that, in substance, such infant (naming him), who on a day therein named was of the age of —— years, having been brought before said court, or officer, and it having been ascertained by the testimony of the witnesses that such infant was a suitable person to be committed to the instruction and discipline of such institution, and in case of conviction for crime (naming the offense), therefore such infant was ordered to be committed to said institution.

Discharge.

SEC. 23. Upon the discharge of any person committed to said school, the superintendent thereof, under such regulations and restrictions as the said board of trustees may prescribe, may provide such person with suitable clothing and five dollars in money, and procure transportation for such person to his or her home, if resident in this State, or to the county to which he or she may have been committed, at his or her option. [*Amended March 23, 1893.*]

Aiding in escape of inmate.

SEC. 24. If any person procure the escape of any person committed to the school, or advise or connive at, aid, or assist in such escape, or conceal any such person so committed after such escape, he shall, upon conviction thereof in any superior court, be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not less than two months nor more than one year, or by both such fine and imprisonment; or, if such person so convicted be under the age of sixteen years, then he shall be sentenced to the school, as in this act provided. [*Amended March 23, 1893.*]

Who shall execute writ of commitment.

SEC. 25. It shall be the duty of the sheriff of any county wherein an order is made or approved by a superior judge committing any minor to said school, to execute any and all writs of commitment issued or approved by said judge, and to receive as compensation therefor such fees as are now or may hereafter be provided by law for the transportation of prisoners to the state prison; *provided,* that in all cases where the commitment shall be made under section 16*a*, 16*b*, or 16*c*, of this act, the parent, guardian, or other protector of such minor may, at his option, and in all cases where he is liable, or where the estate of such minor is sufficient, execute said writ of commitment, after having been duly sworn therefor with like powers and with like effect as the sheriff would possess in such case, but without expense to the state; *and further provided,* that in the case of a minor female committed to said school, and there is no parent, guardian, or other protector of such minor, who, in the opinion of the court, is a proper person to safely conduct such female to said school, that then, in

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such case, the court shall appoint some suitable woman of satisfactory character and discretion, who shall take the custody of such minor female after her said commitment, and shall forthwith deliver her to said school, and be entitled to the same compensation therefor as is otherwise provided to be paid to the sheriff in all cases where, if such minor were a boy and were by a sheriff delivered to said school, he, the said sheriff, would be entitled to receive compensation, under the terms of this act. [*Amended April 19, 1909.*]

Examination of claims.

SEC. 26. The said board of trustees shall examine, audit, and allow the demands arising under the terms of the aforesaid act and the amendments thereto, and the state controller shall thereupon draw his warrants therefor, payable out of the proper fund, and the state treasurer is hereby ordered to pay such warrants. [*Amended March 23, 1893.*]

Transfer of boy under eighteen.

SEC. 27. Any boy under the age of eighteen years, who is undergoing sentence in any state prison in this state (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the state board of prison directors, with the approval of the governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for the other inmates of the institution. [*Enacted February 7, 1907.*]

WHITTIER STATE SCHOOL—PAROLE OFFICER.

An act making an appropriation of five thousand dollars, to be used by the board of trustees of the Whittier State School, at Whittier, California, providing for a parole officer, his compensation and traveling expenses.

[Approved March 21, 1907.]

SECTION 1. The board of trustees of the Whittier State School are hereby authorized to appoint a parole officer whose duty it shall be to find suitable places for those who are ready to leave the school, visit and care for them during the period of probation, make such changes as may be necessary to secure the best employment of said inmates and to perform such other duties as may be required of him by the superintendent and board of trustees.

SEC. 2. The sum of five thousand dollars is hereby, appropriated out of any money in the state treasury not otherwise appropriated, to be expended for salary and traveling expenses of such parole officer.

SEC. 3. The salary of such parole officer shall be not to exceed one hundred and twenty-five dollars per month, and necessary traveling expenses, incurred in the discharge of his duties, as described in this act. All claims for traveling expenses shall be accompanied by an itemized bill.

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SEC. 4. Not more than fifty per cent of the appropriation shall be expended in any one year.

SEC. 5. This act shall take effect immediately.

COMMITMENTS TO WHITTIER AND PRESTON.

An act relating to commitments to the state school at Whittier and to the Preston School of Industry; fixing the authority to examine and commit to such schools with the superior court judges of the counties, and fixing the responsibilities from which commitments are made to the state for maintenance of the persons committed therefrom; providing for the manner of payment thereof, and fixing the responsibility of the parents to the counties from which their children are committed.

[Approved March 26, 1895.]

SECTION 1. The superior judge of any county, and no other judicial officer, shall have the power to examine, discharge, or commit any offender either to the Whittier State School or to the Preston School of Industry; *provided,* that the superior judge shall determine whether or not the parent or guardian of any minor committed to the Whittier State School or to the Preston School of Industry is able to pay to the county in which the commitment is made for the maintenance of such minor during the term of such commitment; and when the superior judge shall determine that said parent or guardian has the ability to pay as aforesaid for the maintenance of such minor during the term of such confinement, the parent or parents or guardian shall pay into the treasury of such county the sum of eleven dollars per month in advance; and in case of the failure to pay the same as herein provided it shall be the duty of the district attorney of such county to proceed to collect the amount from such parent, parents, or guardian in the manner that other indebtedness against the county is collected.

SEC. 2. For each and every person hereafter committed to either the Whittier State School or the Preston School of Industry, the county from which the commitment is made shall pay into the state treasury the sum of one hundred and thirty-two dollars per annum, and at that rate for each fraction of a year.

SEC. 3. It is hereby made the duty of the clerk of the superior court of the county from which such commitment is made, to certify to the county auditor the name, age, and date of commitment of each person committed by the superior judge thereof, and the amount due to the state from the county by reason of such commitments, and before the first day of May and December of each and every year to file with the treasurer of the county a statement of the number of commitments, with the date thereof, and the amount due from the county by reason of such commitments, to the state treasurer; and it is further made the duty of the county treasurer, during the settlement or at the time of the settlement with the state during the month of May and December of each year, to pay to the state treasurer,

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through the state controller, the amount so found to be due to the state by reason of commitments to the state schools as herein provided.

SEC. 4. The superintendent of the state school at Whittier and the Preston School of Industry are hereby required to transmit to the state treasurer a statement of all commitments to their respective institutions, showing the name of the person committed, the date of the commitment, and the county from which the commitment is made, and the amount due to the state from the county by reason of such commitments; said statement to be made quarterly as follows: on or before the first day of January, the first day of April, the first day of July, and the first day of October of each year; and it is hereby made the duty of the controller of state to add the amounts due to the state from said counties such sum as may be shown to be due by reason of commitments to such schools, as in section two of this act provided.

SEC. 5. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 6. This act shall take effect immediately.

CALIFORNIA STATE REFORMATORY.

An act to establish the California state reformatory; to provide for purchase of land therefor; and the construction of buildings and other improvements in connection therewith; to provide for the commitment and transfer of prisoners thereto and therefrom; to provide for the equipment, conduct and management thereof; and to make an appropriation therefor.

[Approved April 24, 1911.]

California state reformatory.

SECTION 1. There is hereby established a reformatory for the confinement, discipline and instruction of prisoners committed thereto as hereinafter provided, to be known as the California State Reformatory.

Who may be sent to reformatory.

SEC. 2. Any male person not less than sixteen and not more than thirty years of age at the time of sentence, convicted of felony for the first time may be sentenced to confinement in said reformatory, when in the judgment of the court said person is capable of reformation and said sentence is compatible with the general welfare, and the sentence shall designate the minimum and maximum term prescribed by law for the particular offense, but shall fix no other term; *provided, however,* that if no minimum is fixed by law the court shall fix a minimum of one year. The provisions of section 1588 of the Penal Code relating to credits for good conduct shall not apply to prisoners in the state reformatory.

Prison directors to manage.

SEC. 3. The state board of prison directors shall manage and maintain said reformatory when ready for occupancy as hereinafter provided. Said

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board shall employ a superintendent who shall be the executive head of said reformatory, and shall establish such other positions as the needs of the service may from time to time require. Such positions shall be filled by the superintendent in the manner provided by law. The board may consolidate or abolish such positions and may fix and change the salaries to be paid.

Rules.

SEC. 4. The board of prison directors shall establish the rules under which the reformatory shall be conducted for the purpose of reformation of those committed to it; and shall adopt such methods as the board may deem expedient to restore them to freedom as self-supporting and self-respecting members of the state. Such rules shall include provision for keeping records of the facts known of each prisoner on entrance and of his conduct and progress at such intervals as the board may fix. Each prisoner on entrance shall be thoroughly examined by a competent physician for physical or mental defects or abnormalities, and shall be provided such physical and surgical treatment as may be necessary to overcome such defects, so far as practicable.

Grades for prisoners.

SEC. 5. The board of prison directors shall, by rule, establish not less than three grades for the prisoners committed to the reformatory, one of which shall be the entering grade. The board shall so far as practicable establish rules by which each prisoner shall be promoted to a higher grade or reduced to a lower grade in accordance with his conduct.

Parole.

SEC. 6. The board of prison directors shall make and enforce rules governing the release of prisoners on parole and their conduct while on parole and their final discharge, and it is hereby declared the policy of the law that prisoners in said reformatory shall be given their liberty whenever in the judgment of the said board such release is compatible with the public welfare, and said prisoner will conform to its rules concerning prisoners on parole and support himself by honest industry; *provided,* that no prisoner shall be released before the expiration of the minimum term fixed by law for the offense of which he was convicted, but nothing herein contained shall be construed to restrict the power of the governor to pardon any prisoner.

Return of paroled prisoner for unsatisfactory conduct.

SEC. 7. Whenever the governor of the state, the superintendent of said reformatory, or any member of the state board of prison directors is dissatisfied with the conduct of a paroled prisoner he may issue a written order, reciting the commitment and parole of said prisoner and his dissatisfaction with the conduct of said paroled prisoner, and directing his arrest and return to said institution, and said order shall be a sufficient warrant for any parole, probation or peace officer named therein to arrest and deliver said prisoner to any officer of said reformatory for return

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thereto, and it is hereby made the duty of all such officers to execute any such order in like manner as a warrant of arrest for felony. At the next meeting of said board it shall determine whether or not the order by which such prisoner was placed on parole shall be revoked. If any prisoner on parole shall leave the state without permission from said board he shall be held to be an escaped prisoner and shall be arrested as such.

Final release of prisoner.

SEC. 8. The board of prison directors may give a final release to any prisoner who has fulfilled the conditions required of him in the reformatory and upon parole, when in the judgment of the board he is fitted to take his place as a free citizen of the state, and shall have power, by so providing in the order of release, to restore said prisoner to all the rights of citizenship. When any prisoner shall have served the maximum term provided by law for the offense of which he was convicted he shall thereupon be discharged. No petition or other form of application for the parole or release of a prisoner shall be entertained by the board, except the application made by the prisoner himself.

Incorrigible prisoner.

SEC. 9. The board of prison directors may establish rules by which any prisoner appearing to be incorrigible may be removed to any one of the state prisons. Such prisoner shall serve the maximum term established by law for the offense of which he was convicted, including the time served in the reformatory, with such deductions for good conduct during his incarceration in such prison as the law and the rules of the prison may allow.

Transfer from prison.

SEC. 10. The board of prison directors may transfer from the state prisons to said reformatory any prisoner serving his first term for felony who in their judgment can be reformed and restored to a life of honest industry; *provided,* that the consent of the prisoner to be bound by the terms of this act, and for the maximum period fixed by law for the offense of which he was convicted unless sooner discharged, shall be first procured in writing. Said prisoner shall thereafter be treated in all respects as though originally committed to said reformatory.

Prison law applicable.

SEC. 11. The laws governing the state prisons of this state in relation to expenses of transportation of prisoners to and from the same, escapes, prevention of escapes, suppression of riots, revolts, mutinies, or insurrections, and the punishment of crimes committed therein, are hereby made applicable to the reformatory.

Instruction in reformatory.

SEC. 12. The discipline of the reformatory shall include instruction in the elementary school courses and in pursuits by which the prisoners may support themselves when released. Said instruction shall chiefly be given

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in agriculture and horticulture by the best methods as developed by the University of California and the department of agriculture of the United States. Instruction in other forms of labor may be established in the discretion of the board of prison directors; *provided,* that the prisoners shall be distributed among the various trades and employments so that no excessive number be directed to any trade or employment.

Disposition of products.

SEC. 13. Products of said reformatory shall so far as possible be supplied for state, county, municipal, school or other public use, and the reformatory shall collect or be credited with the fair market price therefor. No manufactured product shall be supplied, sold, exchanged or given away for private use or profit.

Employment for paroled prisoners.

SEC. 14. The probation officers of the state shall co-operate with the state board of prison directors and the state parole officer, in procuring employment for and supervising paroled prisoners and the probation officers of each county shall act as parole officer for all prisoners on parole living within the limits of their county, under such general rules as may be established by the state board of prison directors and under the supervision of the state parole officer.

Earnings of prisoners.

SEC. 15. The board of prison directors may allow to prisoners such proportion of their earnings above the cost of their maintenance as the board may deem proper.

Location of reformatory.

SEC. 16. A commission consisting of the governor of the State of California, the lieutenant governor of the state and three other persons, to be selected by the governor of the state, is hereby constituted a commission for the location and construction of said reformatory as hereinafter more particularly provided. Said commission as soon after the passage of this act as possible, shall select a suitable site for said reformatory of not less than six hundred acres. The said commission is directed to secure land susceptible of irrigation if necessary and suitable for the agricultural and horticultural work to be carried on by the prisoners. When a suitable site is selected by said commission they are hereby authorized and empowered to purchase the land so selected, together with water and water rights appertaining thereto, and if necessary shall purchase additional water rights or make provision for the development of water for use on said land. The purchase price of said land may be made payable in installments out of the appropriations hereinafter provided, as may be agreed between said commission and the owner or owners of said land. Title to the land shall be taken in the name of the State of California and first payment therefor shall be made at the time of the delivery of deed or deeds by the owner or owners to the governor of the State of California for and on behalf of the state. The said commission shall

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adopt plans for the buildings to be erected upon said land for said reformatory to accommodate not less than one thousand prisoners, and may employ architects or engineers or both in the preparation of said plans, and in the construction of said buildings. The said commission is authorized to employ and fix the compensation of such free labor and skilled assistants as may be needed in the erection of such buildings and shall so far as possible utilize the labor of prisoners in said construction as hereinafter provided.

Prisoners to aid in construction.

SEC. 17. The state board of prison directors shall on the request of the said commission furnish a list of not less than one hundred (100) or more than three hundred (300) prisoners in San Quentin and Folsom state prisons, who would be available for use in the construction of said reformatory. In the selection of such men for said list the board of prison directors shall name those men who are skilled in building and who have shown themselves active and energetic, and so far as possible shall name those who under the rules of the said board of prison directors would be entitled to parole on or before the completion of the buildings of said reformatory, as estimated, and who would be suitable for transfer to said reformatory upon its completion. From this list so submitted as aforesaid, the state board of prison directors shall designate those to be employed in constructing the buildings of said reformatory and upon such designation said board of prison directors shall cause to be transported to the location selected for said reformatory said prisoners in such numbers and at such times as may be required by said commission. Temporary buildings may be erected for housing said prisoners while engaged in said work of construction. The state board of prison directors is authorized and directed to employ a superintendent and necessary guards while engaged in said construction and particularly to have charge of them during the hours they are not actually engaged upon the buildings of the said reformatory. During the hours that said prisoners are actually engaged in work of construction of said building they shall be under the supervision and direction of those officers and foremen employed by said commission to erect said buildings. At any time during the progress of said work, prisoners engaged therein who have shown themselves unfit to work under the conditions herein provided, shall be returned to the state penitentiary on order of the board of prison directors, and any prisoner who makes his escape from such employment shall be returned to the state prison from which he was originally transferred. The state board of prison directors shall have the same jurisdiction to parole prisoners engaged in this work as any other prisoners in any other state prison, and shall make such rules concerning their custody and discipline while engaged in said work as may be necessary. The state board of prison directors may fix the compensation to be paid to said prisoners for their work while constructing said buildings, not to exceed twenty-five cents per day, such money to be paid to said prisoners upon their parole or final discharge, from the money hereinafter appropriated, unless the board declares said amount forfeited by bad conduct. The state board

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of prison directors shall provide the necessary food, clothing and transportation for said prisoners while engaged in said work, to be paid upon their order by the state board of examiners from the moneys herein appropriated for the construction of said reformatory buildings. There is hereby appropriated for the purpose of carrying into effect the provisions of this law the sum of one hundred and fifty thousand dollars; five thousand dollars to be available July 1, 1911, and one hundred and forty-five thousand dollars to be available July 1, 1912.

Governor's proclamation.

SEC. 18. Whenever the buildings are so far completed as in the judgment of said commission to be available to receive prisoners committed by the court, a proclamation to that effect shall be published by the governor and thereafter the courts may commit prisoners to the said reformatory in the manner hereinafter provided, and during the progress of said work shall be treated in the same manner as the prisoners transferred by the state prisons as herein provided; *provided further,* that on January 1, 1915, the commission hereinbefore provided shall terminate. Thereupon the state board of prison directors shall take charge of said reformatory and be vested with the powers hereinbefore conferred upon the said commission, and thereafter all further construction and expenditure shall be under their direction and control.

SEC. 19. This act shall take effect immediately.

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